

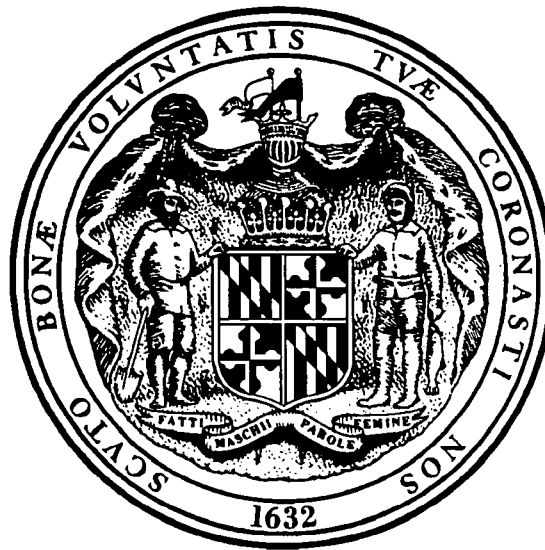
971832

RECEIVED

JUN 3 1997

MARYLAND STATE ARCHIVES

**FINAL REPORT OF THE
TASK FORCE TO EXAMINE
THE STATE'S CEMETERY AND FUNERAL INDUSTRY**



December 1996

THE TASK FORCE TO EXAMINE THE STATE'S CEMETERY
AND FUNERAL INDUSTRY

Edward M. Ranier, Chairman
Lord and Whip
800 One Center Plaza
120 West Fayette Street
Baltimore, Maryland 21201
(410) 539-5881

December 24, 1996

The Honorable Parris N. Glendenning
Governor, State of Maryland

The Honorable Thomas V. Mike Miller, Jr.
President, Maryland Senate

The Honorable Casper R. Taylor
Speaker, Maryland House of Delegates

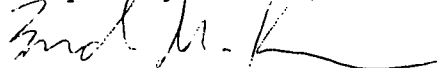
Dear Sirs:

Pursuant to Chapter 209 of the Laws of Maryland of 1996, I am hereby submitting the report of the Task Force to Examine the State's Cemetery and Funeral Industry.

I wish to thank the members of the Task Force and the staff from the Department of Legislative Reference that were assigned to assist them for their time, interest, and diligent effort committed to this work.

All of the Task Force members exhibited strong dedication to the goals contained in the enabling legislation throughout the numerous lengthy meetings that were required. The members deserve a special commendation for their commitment and expertise.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Ed M. Ranier", with a long horizontal flourish extending to the right.

Edward M. Ranier

FINAL REPORT
OF THE
TASK FORCE TO EXAMINE THE STATE'S
CEMETERY AND FUNERAL INDUSTRY

Pursuant to Chapter 209 of the Laws of Maryland of 1996
(House Bill 304)

December 24, 1996

The Legislative Division
of the Department of Legislative Reference,
General Assembly of Maryland,
prepared this document.

For additional copies or further information
contact the Division at:

90 State Circle
Annapolis, Maryland 21401

Baltimore area [(410) 841-3870] Washington area [(301) 858-3870]
Other areas (1-800-492-7122)
TTY 410-841-3814
TTY 301-858-3814

The Department of Legislative Reference does not discriminate on the basis of race, color, national origin, sex, religion or disability in the admission or access to its programs or activities. Sherry M. Little has been designated to coordinate compliance with the non-discrimination requirements contained in Section 35.107 of the Department of Justice Regulations. Requests for assistance should be directed to Ms. Little at the telephone numbers shown above.

Members of the Task Force:

Edward Michael Ranier, Chairman

Honorable John J. Hafer

Honorable Martin G. Madden

Honorable Decatur W. Trotter

Honorable Hattie N. Harrison

Honorable Dan K. Morhaim

Honorable C. Anthony Muse

Harriet K. Suskin

Judith Black Donaldson

Sheila G. Stewart-Duncan

David Michael Goodman

Frank A. Porter

John Eugene Smialek

Michael Raymond Lachance

Joe Jenkins, III

Earl L. Canapp

Margot G. Gilison

Frank J. Markowski

Lisa E. Maddux

Rebecca G. Bowman

Susan E. Elson

Thomas J. Murphy, III

Charles S. Brown

Sarah F. Rex

Staff:

Ross K. Goldstein

Shauna G. Mitchell

Department of Legislative Reference

90 State Circle

Annapolis, Maryland 21401-1991

410-841-3870

301-858-3870

TABLE OF CONTENTS

REPORT

<i>Introduction</i>	9
<i>Regulation of the Cemetery Industry</i>	11
<i>Preneed Trusting Requirements</i>	17
<i>Regulation of the Funeral Industry</i>	21
<i>Miscellaneous Issues</i>	25
<i>Summary of Recommendations</i>	27

APPENDICES

<i>Proposed Legislation to Create the Office of Cemetery Oversight</i>	33
<i>Minutes of Task Force Meetings</i>	51
<i>June 17, 1996</i>	53
<i>August 5, 1996</i>	55
<i>August 19, 1996</i>	61
<i>September 18, 1996</i>	65
<i>September 30, 1996</i>	73
<i>October 15, 1996</i>	81
<i>October 28, 1996</i>	87
<i>November 4, 1996</i>	97
<i>Nvember 18, 1996</i>	111
<i>December 2, 1996</i>	121
<i>December 16, 1996</i>	135
<i>Chapter 209 of the Laws of Maryland of 1996 (House Bill 304)</i>	147

EXECUTIVE SUMMARY

FINDINGS AND RECOMMENDATIONS

Introduction

The Task Force to Examine the State's Cemetery and Funeral Industry (Task Force) was established during the 1996 Session of the General Assembly in response to numerous consumer complaints regarding unfair and deceptive trade practices, issues pertaining to perpetual care, and reports of unscrupulous tactics practiced by salespersons. The twenty-five members of the Task Force included members of the General Assembly, representatives of various government agencies, representatives of both the cemetery and funeral industry, and members of the general public representing the interest of consumers. The Task Force was charged, in pertinent part, with assessing the regulatory scheme of the cemetery and funeral industry in this State as it compares to surrounding states, the costs to consumers of cemetery and funeral merchandise and burial plots, and some of the issues facing small businesses in both the funeral and cemetery industry.

The Task Force met 12 times from June through December of 1996 and participated in one site visit to Dulaney Valley Memorial Gardens in Timonium, Maryland. Two public hearings were held in Annapolis to solicit information from both members of the general public and the cemetery and funeral industries. At the organizational meeting of the Task Force, an agenda was established in order to provide a framework for addressing the issues facing the Task Force. First, the Task Force planned to consider regulation of the cemetery industry. Second, the Task Force proposed to turn its attention to a variety of issues regarding the preneed sale of cemetery and funeral goods and services. Third, the Task Force decided it would address issues dealing with the regulation of the funeral industry. Finally, the Task Force determined that it would conclude by addressing miscellaneous topics that were brought to its attention during the course of the Task Force's business. This same framework will be used as an outline for this report.

Regulation of the Cemetery Industry

The Task Force determined that, among the various death care industries in the State, which include the funeral industry, cemetery industry, monument industry, and other death-care providers, it is the cemetery industry that is in most need of greater oversight. Presently, the only laws governing the cemetery industry pertain to preneed issues, trusting requirements, and perpetual care. The Secretary of State's Office provides limited regulatory authority over cemeteries on these issues, although most of the cemeteries in this State are not under the direct regulatory authority of any state agency or board. In comparison, funeral directors, morticians, and embalmers are all licensed and regulated under the Maryland State Board of Morticians. The Task Force was particularly concerned that, under current law, consumers do not have an authoritative body to file complaints that pertain to cemeteries, or a process whereby sanctions could be imposed when cemeteries violate the law or business standards. Unless the complaint against a cemetery constitutes an unfair and deceptive trade practice, there is little action, beyond mediation, that the Attorney General's Office can take on behalf of a consumer.

The Office of Cemetery Oversight

The Task Force proposed that an Office of Cemetery Oversight (Office) be established under the authority of the Department of Labor, Licensing, and Regulation (DLLR). Significant discussion occurred regarding the method of regulation. Primarily, the Task Force considered a traditional board, such as the one used to regulate the funeral industry, or an oversight office. The Task Force ultimately decided against creation of a board for the following reasons:

1. The current practice is to create boards only for professions that require a certain amount of expertise, educational training, and examination;
2. Additional costs are often associated with a board as a result of per diems, expenses, open meeting provisions, record keeping, and out of state travel;

- 3 It was suggested that certain industries function adequately without a board under the auspices of DLLR, such as the financial industry; and
4. The additional bureaucracy that is associated with a board was determined to be politically unfavorable in the current climate of government downsizing.

The Director

The Office will be administered by a full-time director appointed by the Governor and approved by the Secretary of DLLR. The proposed legislation prohibits the director from engaging in cemetery practice or any activities that might cause conflict with the position. Among other things, the director will have the authority to investigate complaints, inspect records and cemetery sites, conduct hearings and examine witnesses, and adopt rules and regulations to carry out the provisions of the law.

Memorialists

The monument industry believes that its needs and concerns have been largely ignored for many years. Memorialists who testified before the Task Force stated that cemeteries discourage consumers from purchasing monuments from outside companies by charging consumers exorbitant fees to allow a monument company to install a monument at a cemetery, prohibiting a monument company from installing monuments at a cemetery, or telling consumers that they will be afforded no warranties or guarantees if they purchase a monument from a monument company as opposed to the cemetery. Meredith Smith Andrus, an Assistant Attorney General with the Antitrust Division of the Attorney General's Office, confirmed that these kinds of problems do exist and expressed a need for tougher legislation to provide substantial grounds for prosecution.

The Task Force determined that since the monument industry plays a significant role in the death care industry by providing products to consumers, they too should be regulated and protected by the Office.

The Advisory Council

The consumer members of the Task Force were particularly interested in ensuring that the interest of consumers be fully and fairly represented in the regulations adopted by the Director. Likewise, the members representing the cemetery industry were especially adamant that their industry be given an opportunity to speak to certain decisions that a Director might make. In response, the Task Force provided for the creation of an advisory council to serve as a source of expertise for the Director and provide insight into the needs of the business community and the consumers served by the industry. The Director is required to consult with the advisory council when adopting a code of ethics for cemeteries and monument companies.

The nine members of the advisory council will be appointed by the Secretary of DLLR. The council will be comprised of four consumer members, and one member each from a nonprofit cemetery, a for-profit cemetery, a religious cemetery, a municipal cemetery, and a monument company.

Fees

The proposal requires that partnerships, limited liability companies, and corporations that seek to operate a cemetery or a monument company be required to obtain a permit from the Office. Moreover, each cemeterian and memorialist must register with the Office. The fees will be set by the Director based on the size and volume of the business and the types of services provided. The Task Force adopted a sliding scale prototype because of concerns that the religious and nonprofit cemeteries might be disproportionately impacted by registration fees. This approach still recognizes the importance that all cemeteries, regardless of their status as for-profit, nonprofit, or religious, be required to register with the Office.

The proposal provides that the Office be fully funded by the fees collected from the regulated industry. The money collected from the fees will be deposited into the Cemetery Oversight Fund. The Fund is intended to cover the actual documented direct and indirect costs of fulfilling the duties of the Office. In addition, the proposal provides that unspent portions of the Fund will not revert to the General Fund of the State, but remain in the Cemetery Oversight Fund.

Disclosures

Many of the consumer protection concerns expressed at the public hearings and discussed at numerous meetings pertained to the issue of disclosure. The Task Force heard testimony that consisted of consumers being denied a general price list at cemeteries and cemeteries refusing to show consumers where a burial plot lies. In response, the proposal requires that registrants and permit holders provide consumers with various written disclosure requirements at the time of entering into a contract with a consumer for the sale of burial goods and services. The disclosure requirements include an itemized cost for each service performed under the contract, a list of services and costs incidental to the burial that are not covered by the contract, a statement regarding the cemetery's policy on the use of independent monument companies, the terms of the consumer's right of cancellation and refund, and the name, address, and telephone number for the Office of Cemetery Oversight.

The proposed legislation also specifies that the disclosure be conspicuously incorporated in the contract in 12-point type. The disclosure must be signed and dated by the consumer who must be provided with a copy of the contract at the time of purchasing the burial goods or services. The disclosure must occur not later than the first scheduled face-to-face contact with the consumer or the party representing the consumer. If the purchase includes a burial plot, the registered cemeterian or permit holder must provide the consumer with a copy of a location survey that is performed by a licensed land surveyor or by any other method acceptable to the Director, which indicates the location of the purchased plot within the cemetery.

Penalties

Finally, the proposal establishes the grounds for denying, revoking, or suspending a registration or permit. The grounds include fraudulently or deceptively obtaining or attempting to obtain a registration or permit, conviction of a felony, theft offense, or crime of moral turpitude, knowingly employing an individual who has been convicted of a felony, theft offense, or crime of moral turpitude, failing to provide or misrepresenting any information required to be provided, or violating a provision or regulation adopted by the Director.

The proposal authorizes the Director to obtain a restraining order to prohibit the operation of a cemetery charged with a violation that could result in suspension or revocation of a

registration or permit. The Director may petition a court of equity to appoint a receiver or trustee to take charge of the assets and operate a cemetery when a registration or permit has been revoked. Certain complaints may be sent to binding arbitration by the Director and when consumers are seeking restitution. Either party may request binding arbitration. The Director may levy a civil penalty in lieu of or in addition to other disciplinary actions at the Director's discretion.

Cooperation with State Board of Morticians

Several consumer members of the Task Force suggested that the State Board of Morticians and the proposed Office of Cemetery Oversight be combined into one board that governs both the funeral and cemetery industry. It was argued that consumers may be confused about where to make a complaint if there are two separate bodies governing the death care industry. On the other hand, the members recognized the differences between the two industries and decided to recommend that the two entities work together in cooperation. The proposal requires that a consumer information brochure be published by the Office of Cemetery Oversight, the Board of Morticians, and the Attorney General's Office of Consumer Protection. This publication will inform consumers of their rights under the law and advise them as to processing a complaint against a member of the industry. The Task Force recommended that the Office and the Board make referrals to each other when complaints are submitted to the wrong entity. Moreover, the Task Force recommended that the Office and the Board examine the feasibility of combining the two governing bodies into one as currently done in Oregon and in Florida.

Preneed Trusting Requirements

The second major topic addressed by the Task Force concerned the preneed sale of funeral and cemetery goods and services. The Task Force acknowledged that purchasing funeral and cemetery goods and services before those goods and services are needed is in the best interest of the consumer. Preneed purchasing affords the consumer the opportunity to make decisions in an unpressured environment and to shop around for the best products and prices. In addition, the preneed purchase of funeral and cemetery goods and services generates a significant amount of business for entities in this State. Mr. Lee Norrgard of the American Association of Retired Persons informed the Task Force that well over \$20 billion nationwide is tied up in preneed trust accounts or preneed insurance. The consumer members of the Task Force were especially concerned that the money, and the goods and services purchased on a preneed basis, be available at the time of death. This topic produced significant discussion for the Task Force because in this State the trusting requirements vary significantly by industry. The funeral industry currently trusts 100% of the money received for preneed goods and services, whereas the cemetery industry currently trusts 55% of the money collected.

Trusting Requirements

The Task Force held a public hearing on October 15, 1996 in Annapolis to collect information regarding preneed issues in this State. A representative from the Maryland State Funeral Directors Association recommended that everyone selling preneed goods and services in the death care industry be governed by uniform provisions with respect to preneed. The Association maintained that 100% of the funds collected for all preneed sales be deposited in trust in a federally insured investment, and that the buyer be entitled to a 100% refund of the principal deposited and the interest earned. This is the current practice with respect to the funeral industry and that industry believes this practice should be applied uniformly to cemeteries and other third-party sellers of preneed goods and services. Moreover, the AARP strongly recommends that uniform requirements be applied to both the funeral and cemetery industry because they are increasingly tied together and consumers view them as one industry.

Representatives from the Maryland Free State Cemetery Association argued that the current requirement that cemeteries escrow 55% of the money collected on all sales of preneed goods and services is more than sufficient. The Cemetery Association suggested that the trusting requirement remain as it is under current law. The Association believes that cemeteries should not be required to escrow higher percentages of preneed money because it is their belief that it is not necessary in order to protect the consumer, and the smaller independent cemeteries need the money to maintain overhead. It was also suggested that consumers not be entitled to receive a full refund because cemeteries use the money received from preneed income to maintain their overhead and for the upkeep of the cemetery.

At a subsequent meeting of the Task Force, the Maryland State Funeral Directors Association suggested an alternative proposal to their earlier recommendation that both the funeral and cemetery industry be required to trust 100% of preneed funds. The second proposal recommended that, with respect to the sale of preneed goods and services, excluding burial spaces, 80% of the monies collected be deposited in a federally insured institution.

The Task Force, after a considerable amount of deliberation, voted to recommend that, with respect to the preneed sale of **merchandise**, **80%** of the money received be trusted in a federally insured institution. If the purchaser decides to cancel the contract, the refund will be granted with all principal to the buyer and all interest to the seller. However, if the contract has been paid in full at the time of cancellation, the interest will be split equally between the buyer and the seller. The Task Force also voted to recommend that, with respect to the preneed purchase of **services**, **100%** of the money received be trusted in a federally insured institution. The same refund provisions apply with services as with merchandise. Finally, the Task Force decided that the trusting amounts should apply uniformly to funeral homes, cemeteries, and third-party sellers of death care items. Under current law, third-party sellers have no trusting requirement.

It should be noted that the State Board of Morticians stated that they will likely continue to encourage their licensees to trust 100% of the money from any preneed sale.

Reasonable Costs

The Task Force recommended that, if there is a cancellation of a preneed contract for undelivered goods, the seller can withhold reasonable costs incurred up to a certain percentage of the interest earned per the recommendation of this report. The Task Force is proposing this recommendation because of the costs that cemeteries incur for setting up a preneed account, auditing the accounts on an annual basis, and paying commissions to cemetery salespersons.

Third-Party Sellers

The Task Force recommended that all sellers of preneed death care goods and services, excluding funeral directors, who are governed by the State Board of Morticians, be required to register with the Office of Cemetery Oversight. As stated earlier, under current law, there are preneed trusting requirements for both funeral homes and cemeteries. Moreover, funeral homes are required to be licensed and cemeteries are required to provide certain documentation to the Secretary of State's Office. However, third-party sellers of caskets and other death care items are currently not required to comply with trusting or auditing requirements. Consequently, consumers who purchase goods on a preneed basis have no protection for their money and no guarantees that the goods will be provided when the need arises. With this in mind, the Task Force recommended that the proposed Office of Cemetery Oversight govern the preneed sales of monument companies, casket sellers, and other third-party sellers of preneed goods and services who are currently not governed by law.

Price Lists

The Task Force heard testimony at the public hearing which described scenarios where consumers went to cemeteries to gather information on preneed arrangements and were never given anything in writing after repeatedly asking for a price list. Under current law, funeral homes are required to give a general price list, as well as a casket and an outer burial container price list, to consumers. Consequently, the Task Force proposed that all sellers of preneed goods and services provide consumers with a general price list of the goods and services offered for purchase on a preneed basis. The general price list should include an itemization for the cost of burial services, such as ground openings and closings, extra depth interment, interment of

cremated remains, and mausoleum entombment. These itemizations should be specifically stated with a disclaimer that prices are effective as of the date of purchase and may be subject to change. The recommendations require that a price list for plots, mausoleums, memorializations, and urns be stated in terms of a general price range. In addition, if preneed prices and at-need prices differ, the prices should be stated separately, side-by-side.

Regulation of the Funeral Industry

Composition of the State Board of Morticians

The State Board of Morticians is currently comprised of 12 members appointed by the Governor upon the recommendation of the Secretary of the Department of Health and Mental Hygiene and with the consent of the Senate. Eight members are practicing licensed morticians or funeral directors, and four members are consumers who have no training or substantial financial interest in the profession. Certain consumer members of the Task Force expressed concern that more consumer members should be appointed to the Board of Morticians. In response, two of the current consumer members of the Board were invited to address the Task Force. Those members insisted that their voices were heard and that they served effectively on behalf of consumers. Further, they asserted that the Board would be more effective if it had the ability to hire additional investigators. Currently, the Board of Morticians shares an investigator with several other boards under the jurisdiction of the Department of Health and Mental Hygiene. The Task Force voted to keep the current composition of the State Board of Morticians.

Delegation of Duties to Non-licensed Morticians

Testimony before the Task Force raised the issue of whether a non-licensed mortician or funeral director should be allowed to perform certain functions related to funeral services if delegated by a licensed mortician. The argument was made that embalming is the only function performed by a funeral director that should require a license, and that selling funeral arrangements and accompanying the body when being transported could be adequately handled by a non-licensee to save the consumer money. However, funeral directors and representatives from the State Board of Morticians maintained that there would be no protection for consumers if a non-licensee performed these functions because the State Board of Morticians can not regulate non-licensees. Moreover, the funeral directors argued that a family has a right to be served by a licensed professional who upholds the standards of the profession. The Task Force voted to retain the current regulations pertaining to the delegation of duties to non-licensees.

Preneed Insurance

Current law prohibits funeral homes from selling insurance policies that are tied to preneed contracts for goods and funeral services. Funeral directors may be licensed to sell insurance policies, but the funeral home can not be a named beneficiary to the policy. Several insurance companies testified before the Task Force to recommend that the law in Maryland be changed to allow tie-in policies. Monument Life Insurance Company does business in 49 states and the District of Columbia. It sells tie-in policies in 46 states and the District of Columbia. Proponents argued that preneed life insurance policies provide consumers with an additional type of payment option. Mr. Nelson Ayling of the Insurance Commission informed the Task Force that all tie-in policies are prohibited in the State of Maryland for any purchase, not just funeral sales. The Commission is not opposed to the concept of preneed insurance, but is concerned that policy holders may be misled into believing that they have more benefits than the policy provides. The Board of Morticians has no opinion on this issue. The Task Force voted to retain the current prohibition on preneed insurance sales and tie-in policies.

Non-licensees Owning Interest in Funeral Homes

Current Maryland law provides that a funeral home must be owned by a licensed mortician, a professional association comprised of licensed morticians, or a corporation or non-licensee that owns a corporate license, known as an INC. There are currently fifty-nine corporate licenses or INCs in the State of Maryland and the current law prohibits the creation of additional INCs. Of the fifty-nine INCs, twenty-two are owned by out-of-state corporations and thirty-seven by independents. Witnesses testifying before the Task Force argued for a change in this law so that non-licensees would be allowed to own an interest in a funeral home without limitation. Other witnesses, opposed to ending the prohibition on increasing the number of INCs, maintained that the prohibition prevents out-of-state corporations from monopolizing the market and increasing prices. On the other hand, it was suggested that people who are not affiliated with corporations are also prohibited from engaging in the funeral business. It was pointed out that several bills have been introduced before the General Assembly in past years to change the current law, but have failed. The Task Force recommended that current Maryland law be

changed to allow the issuance of additional corporate licenses for the ownership and operation of funeral homes.

Miscellaneous Issues

Sale of Unconstructed Mausoleums

The Task Force addressed the issue regarding the rights afforded to consumers who purchase space in an unconstructed mausoleum. It was argued that consumers should be entitled to a full refund if the mausoleum is not completed by the estimated completion date. Cemeterians maintained that the preconstruction sale of mausoleums is an important aspect of funding the project and that, under current practice, consumers are offered a temporary burial place in the cemetery until the mausoleum is completed. The Task Force recommended that a consumer be given the option of an alternative burial in the ground, another crypt at the cemetery, or a full refund with the option to make arrangements elsewhere.

Imposing Interest on Preneed Contracts

Current law is silent as to whether funeral homes selling preneed goods may impose interest on installment payments. Cemeteries are currently prohibited from imposing interest on the sale of preneed goods, unless the goods are delivered before need. Under the current practice, cemeteries apply what is called "constructive delivery" of cemetery goods, such as caskets, vaults, and urns, by holding the goods in storage for the consumer and deeming the goods delivered. Testimony before the Task Force urged that this practice be prohibited so that cemeteries would be completely prohibited from imposing interest on preneed sales.

Rebecca Bowman, a member of the Task Force representing the Consumer Protection Division of the Attorney General's Office, argued that interest should not be charged on the payments of preneed sales because the consumer does not have actual possession of the goods. She compared the transaction to a retail layaway concept that prohibits retailers from imposing interest on the installment payments. The Maryland Free State Cemetery Association argued that the law be clarified to allow interest to be charged on goods and services that are not delivered because, in most instances, the consumer does not want the goods delivered. The Association maintained that this benefits consumers who can not obtain a loan from a lending institution. The

Task Force voted to retain the current law that allows cemeteries to charge interest on the installment payments of a preneed sale when the goods are delivered.

Families of Homicide Victims

The Task Force addressed the issue of whether the current practice requiring Maryland families of homicide victims to bear the expense of transporting the body from the medical examiner's office after an autopsy should be continued. The Task Force determined that, as a matter of principle, this practice should be discontinued.

Summary of Recommendations

- Adopt proposed legislation creating the Office of Cemetery Oversight within the Department of Labor, Licensing and Regulation.
- Require that all sellers of preneed goods and services provide consumers with a general price list of goods and services offered.
- Require that consumers must be given a general price list that includes burial services such as ground opening and closing, extra depth interment, interment of cremated remains and mausoleum entombment, that is specifically stated with a statement that prices are effective as of the date of purchase and can change at anytime.
- Require that a price list for plots, mausoleums, memorialization, and urns be stated in terms of a general price range.
- Require that preneed and at-need prices be stated separately, but side-by-side, if they differ.
- Prohibit additional handling charges at a cemetery, except reasonable maintenance and service charges, if a marker is purchased elsewhere.
- Require all sellers of preneed death care goods and services, excluding funeral homes, to register with the Office of Cemetery Oversight.
- Require annualized audits across the board for all preneed sellers, an unqualified audit that would be filed with either the Board of Morticians or the Office of Cemetery Oversight.

- Require that contracts conspicuously disclose costs of all goods and services that will be required, but not included in preneed contracts, and disclose the consumer's right to cancellation and refund.
- Require that the seller of any preneed good that must be installed disclose who is responsible for installation to the consumer, and also disclose any warranties that are included.
- Require that price lists be uniform and drafted in a consumer/user friendly manner.
- The trusting amounts must be the same for cemeteries, funeral homes and third-party sellers of death-care items.
- Separate goods and services in determination of trusting amounts.
- If there is cancellation of undelivered goods, the seller can withhold reasonable costs up to a certain percentage.
- Require that eighty percent be trusted on preneed sales of merchandise, with refundability in case of cancellation of all principal to the buyer and all interest to the seller, unless the contract is completely paid, in which case the interest will be split equally between the two.
- Require one hundred percent trusting for preneed services, with full refundability of all principal to the buyer and all interest to the seller, unless the contract is completely paid, in which case the interest will be split equally between the two.
- Allow constructive delivery, with title passing to the buyer, and provide that (1) the CPA determines that the item has been delivered as part of his or her audit, and (2) the consumer be provided with notice of the consequences of constructive delivery.

- If a product is no longer available from a manufacturer when needed, the seller should provide another product of equal or comparable value.
- If a consumer asks for a price list from someone selling preneed death care merchandise, the consumer must be given a price list to retain.
- Retain Title 5 as it is, with respect to the issue of imposing interest on installment payments of a preneed purchase.
- Retain the present prohibition against selling tie-in insurance policies to finance preneed arrangements.
- Retain the current composition of the number of consumer members on the State Board of Morticians.
- Recommend that Maryland law be changed to allow more corporate licenses for the operation of a funeral home.
- Retain the current law regarding delegation of duties to non-licensees in funeral homes.
- Discontinue the practice of requiring Maryland families of homicide victims to pay for transporting the body back from an autopsy (which has been done for the purpose of evidence gathering).
- Require that a corporate owner's name be printed on the price list given to the consumer, including the parent company that owns the funeral home.
- Add the preservation of historic cemeteries to the list of issues for the Office of Cemetery Oversight to administer.

- End the illegal practice of recycling grave sites.
- Require the Director of Cemetery Oversight to study the illegal burial of unrelated people in the same grave and have the results of the study available within one year.
- Ask the Director of the Office of Cemetery Oversight, in cooperation with the advisory council, Catonsville Community College, and representatives of the cemetery industry, to conduct a study of the feasibility of creating a one-year certificate of cemetery management and a center for cemetery management studies to be located at Catonsville Community College.
- Give the Board of Morticians the authority, if they do not already have it, to pursue violations by unlicensed entities owning funeral homes.

APPENDICES

PROPOSED LEGISLATION TO CREATE THE OFFICE OF CEMETERY OVERSIGHT

5-101 Definitions.

- (a) In this title the following words have the meanings indicated.
- (b) "Burial monument business" means a business that provides burial monument services.
- (c) (1) "Cemetery" means land used or to be used for burial.

(2) "Cemetery" includes a structure used or to be used for burial.
- (d) "Director" means the Director of the Office of Cemetery Oversight.
- (e) "Engage in the operation of a cemetery" means owning, controlling, and maintaining a cemetery, including performing the activity necessary for or incident to:
 - (1) establishing or improving a cemetery;
 - (2) interment; and
 - (3) the care, preservation, or embellishment of a cemetery.
- (f) "Interment" means all final disposition of human remains including:
 - (1) earth burial;
 - (2) mausoleum entombment; and
 - (3) niche or columbarium interment.
- (g) "Office" means the Office of Cemetery Oversight.
- (h) "Permit" means a permit issued by the Director to allow a partnership, limited liability company, or corporation to operate a business through which a registrant may engage in the operation of a cemetery or provide burial monument services.
- (i) "Provide burial monument services" means to sell, erect, or inscribe burial monuments.

(j) "Registration" means a registration issued by the Director to an individual to be in charge of the operation of a cemetery or to be in charge of providing burial monument services.

(k) "Registered ceterian" means an individual registered and authorized to be in charge of the operation of a cemetery as a sole practitioner or on behalf of a permit holder.

(l) "Registered memorialist" means an individual registered and authorized to be in charge of providing burial monument services as a sole practitioner or on behalf of a permit holder.

5-102.

The General Assembly finds that it is in the public interest to regulate cemeteries to ensure that sound business practices are followed in the operation of cemeteries.

Subtitle 2. Office of Cemetery Oversight

5-201. Established.

(a) There is an Office of Cemetery Oversight in the Department.

(b) The Office exercises its rights, powers, and duties subject to the authority of the Secretary.

(c) (1) The Secretary shall create an Advisory Council on Cemetery Operations.

(2) The Advisory Council shall consist of the following 9 members:

(i) one member representing a non-profit cemetery;

(ii) one member representing a for-profit cemetery;

(iii) one member representing a religious cemetery;

(iv) one member representing a municipal cemetery;

(v) one member representing a monument company; and

(vi) four members who are consumer representatives.

(3) The Advisory Council shall convene at least once a year to give advice to the Secretary and the Director.

5-202. Director.

(a) (1) The Secretary shall appoint a Director of the Office with the approval of the Governor.

(2) The Director serves at the pleasure of the Secretary.

(b) The Director shall devote full time to the duties of the Office.

(c) The Director is entitled to:

(1) compensation in accordance with the State budget; and

(2) reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(d) The Director shall:

(1) administer and operate the Office of Cemetery Oversight; and

(2) be responsible to the Secretary.

(e) The Director may not:

(i) hold any position or engage in another business that interferes or conflicts with the position of Director;

(ii) be a registered cemeterian or a registered memorialist;

(iii) engage in any act for which a registration is required under this title;

or

(iv) in connection with any registered cemeterian or registered memorialist, permit holder, funeral Director, funeral establishment, or related death care entity, directly or indirectly receive or become entitled to receive any fee or compensation.

5-203. Staff.

The Director may employ a staff in accordance with the State Budget.

5-204. Powers And Duties

(a) With the advice of the Advisory Council and after consultation with representatives of the cemetery industry, the Director shall adopt:

(1) rules and regulations to carry out this title; and

(2) a code of ethics for engaging in the operation of a cemetery or providing burial monument services.

(b) Upon receipt of a written complaint, or at the discretion of the Director, the Director may conduct an investigation including inspection of the records and site of a registered cemeterian, registered memorialist, and permit holders.

(c) The Director may hold hearings on any matter covered by this title.

(d) To enforce this title, the Director may:

(1) administer oaths;

(2) examine witnesses; and

(3) receive evidence.

(e) (1) The Director may issue a subpoena for the attendance of a witness to testify or for the production of evidence in connection with any investigation or hearing conducted under subsection (b) of this section.

(2) If a person fails to comply with a subpoena issued under this subsection, on petition of the Director, a circuit court may compel compliance with the subpoena.

(f) (1) The Director may sue in the name of the State to enforce any provision of this title by injunction.

(2) In seeking an injunction under this subsection, the Director is not required to:

(i) post bond; or

(ii) allege or prove either that:

1. an adequate remedy at law does not exist; or

2. substantial or irreparable damage would result from the continued violation of the provision.

(3) The Director or staff may not be held personally liable for any action taken under this title in good faith and with reasonable grounds.

(g) If the Director finds a violation of this title, the Director may issue a cease and desist order.

(h) The Director may refer to the Office of the Attorney General:

(1) a violation of this title for enforcement; and

(2) an alleged unfair or deceptive trade practice under Title 13 of the Commercial Law Article.

(i) The Director shall keep a list of all registrants and permit holders.

(j) (1) The Director shall distribute a copy of the Maryland Cemetery Act, code of ethics, standards of performance, and applicable rules and regulations to each applicant for registration or permit.

(2) Upon renewal of a registration or permit, the Director shall distribute any amendments to the Maryland Cemetery Act, code of ethics, standards of performance, or applicable rules and regulations that have occurred since the last application.

(k) In conjunction with the State Board of Morticians and the Division of Consumer Protection of the Office of the Attorney General, the Director shall publish a consumer information pamphlet that informs consumers of:

(1) the rights of consumers in the purchase of funeral and cemetery goods and services, including monuments; and

(2) any other information that the Director considers reasonably necessary.

(l) (1) In conjunction with the State Board of Morticians, the Director shall conduct a study to determine the feasibility of combining the Office and the State Board of Morticians into one entity.

(2) The Director shall issue the findings and recommendations of the study to the General Assembly by July 1, 1999.

(m) (1) The Director shall conduct a study regarding:

(i) the illegal recycling of graves; and

(ii) the historic preservation of graves.

(2) The Director shall issue the findings and recommendations of the study to the General Assembly by July 1, 1999.

5-205. Establishment of fees; disposition of money.

(a) (1) The Director shall establish reasonable fees, not exceeding an amount determined by the Secretary, for the issuance and renewal of registrations and permits.

(2) In establishing the fees, the Director shall consider the size of the business, the volume of business conducted, and the type of services provided, including the percentage of pre-need contracts written.

(b) The fees charged shall be set so as to approximate the direct and indirect cost of maintaining the Office.

(c) The Director shall pay all funds collected under this title to the Comptroller who shall distribute the fees to the Cemetery Oversight Fund.

(d) (1) The Fund shall be used to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the Office.

(2) The Fund is a continuing nonlapsing fund, not subject to § 7-302 of the State Finance and Procurement Article.

(3) Any unspent portions of the Fund may not revert or be transferred to the General Fund of the State, but shall remain in the Fund to be used for the purposes specified in this Title.

(4) No other State money may be used to support the Fund.

(f) (1) The Director shall administer the Fund.

(2) Moneys in the fund may be expended for any lawful purpose authorized under the provisions of this title.

(g) The Legislative Auditor shall audit the accounts and transactions of the Fund as provided in § 2-1215 of the State Government Article.

Subtitle 3. Registration.

5-301. Registration required.

An individual shall be registered with the Office before engaging in the operation of a cemetery in this State or providing burial monument services in this State.

5-302. Qualifications for registration.

(a) In order to register, an applicant shall meet the requirements of this section.

(b) The applicant shall be at least 18 years old.

(c) The applicant shall be of good character and reputation.

(d) The cemetery or burial monument business with which the applicant is affiliated is determined to be financially stable in accordance with § 5-304 of this subtitle.

5-303. Application for registration.

(a) An applicant for registration shall:

and (1) submit to the Director an application on the form that the Director provides;

(2) Pay to the Office a nonrefundable application fee set by the Director.

(b) The application shall state:

(1) the name, date of birth, and residence address of the applicant;

(2) the name and fixed address of the affiliated cemetery or burial monument business;

(3) whether the cemetery or burial monument business with which the applicant is affiliated is owned or controlled by a partnership, limited liability company or partnership;

(4) the name and residence address of each employee who sells cemetery goods or services to the public for the applicant while engaging in the operation of a cemetery or burial monument business; and

(5) any other reasonable information that the Director determines is necessary to carry out this title.

5-304. Financial stability.

(a) Each applicant shall demonstrate the financial stability of the cemetery or burial monument business with which the applicant is affiliated by providing the Director with a financial statement with the application for registration.

(b) The financial statement shall:

(1) be on the form that the Director requires;

(2) contain a statement, certified by a certified public accountant employed by the applicant, of the assets and liabilities for the last fiscal year of the cemetery or burial monument business; and

(3) contain an opinion by a certified public accountant employed by the applicant as to the financial stability of the cemetery or burial monument business.

(c) The Director shall make a determination of the financial stability of each applicant based on criteria established by the Director.

5-305. Issuance of license.

(a) The Director shall issue a registration to an applicant who meets the requirements of this title.

(b) A registration issued by the Director under this title is not transferable.

5-306. Scope of registration.

(a) While a registration is in effect, it authorizes the registrant to engage in the operation of a cemetery or burial monument business.

(b) This title does not limit the right of a person to practice funeral direction or mortuary science, if the person is licensed or otherwise authorized under Title 7 of the Health Occupations Article.

5-307. Terms and renewal of registration.

(a) Unless a registration is renewed for a 2-year term as provided in this section, the registration expires on the first Monday in February that comes:

(1) after the effective date of the license; and

(2) occurs in an even-numbered year.

(b) At least 90 days before a license expires, the Director shall mail to the registrant, at the last known address of the registrant:

(1) a renewal application form; and

(2) a notice that states:

(i) the date on which the current registration expires;

(ii) the date by which the Director must receive the renewal application for the renewal to be issued and mailed before the registration expires; and

(iii) the amount of the renewal fee.

(c) Before a registration expires, the registrant periodically may renew it for an additional 2-year term, if the registrant:

(1) is otherwise entitled to be registered;

(2) meets the qualifications set forth for an original registration;

(3) pays the renewal fee set by the Director; and

(4) submits to the Director a renewal application on the form that the Director provides.

(d) The Director shall renew the registration of each registrant who meets the requirements of this section.

(e) In accordance with the Secretary's authority under Title 2 of this article, the Secretary may implement a system of staggered renewals for registrations and permits issued under this title.

5-308. Unfair and deceptive trade practices.

A violation of this title shall be considered an unfair and deceptive trade practice under Title 13 of the Commercial Law Article.

5-309. Display of registration.

Each registrant shall display the registration conspicuously at the business address of the registrant.

5-310. Denials, reprimands, suspensions, revocations; grounds; restraining orders.

(a) Subject to the hearing provisions of § 5-312 of this subtitle, the Director may deny a registration or permit to an applicant, reprimand a registrant or permit holder, or suspend or revoke a registration or permit, if an applicant, registrant or permit holder, or an agent, employee, officer, Director or partner of the applicant, registrant or permit holder:

- (1) fraudulently or deceptively obtains or attempts to obtain a registration or permit;
- (2) fraudulently or deceptively uses a registration or permit;
- (3) is convicted of a felony, theft offense, or crime of moral turpitude;
- (4) fails to provide or misrepresents any information required to be provided under this title;
- (5) violates this title;
- (6) violates the code of ethics adopted by the Director;
- (7) violates a regulation adopted under this title;
- (8) fails to adequately supervise agents, employees, officers, Directors or partners affiliated with a cemetery or burial monument business;
- (9) refuses to allow an inspection required by this title;
- (10) fails to comply with an order of the Director;
- (11) fails to comply with any terms of settlement under a binding arbitration agreement; or
- (12) is found guilty by a court in this State of violating an unfair and deceptive trade practice provision under Title 13 of the Commercial Law Article.

(b)(1) If a registrant or permit holder is charged with a violation of this title that could result in suspension or revocation of the registration or permit, the Director may seek an immediate restraining order in a circuit court in this State to prohibit the registrant or permit holder from engaging in the operation of any cemetery or burial monument business.

(2) The restraining order is in effect until:

- (i) the court lifts the order; or

(ii) the charges are adjudicated or dismissed.

(c) If a registrant or permit holder is charged with a violation of this title that could result in suspension or revocation of the registration or permit, the Director may petition a court to:

(1) appoint a receiver or trustee to take charge of the assets and operate the business of the person whose registration or permit is suspended or revoked; and

(2) take other actions as are appropriate to protect the public interest.

(d) Instead of or in addition to suspending or revoking a registration, the Director may impose a civil penalty:

(1) not to exceed \$5,000 for each violation of this title or an order of the Director under this title; and

(2) not exceeding \$500 for each day a violation continues past the time set for its correction.

(e) To determine the amount of the penalty imposed under this subsection, the Director shall consider:

(1) the seriousness of the violation;

(2) the harm caused by the violation;

(3) the good faith of the registrant; and

(4) any history of previous violations by the registrant.

(f) Any civil penalties collected under this section shall be paid into the General Fund of the State.

5-311. Commencement of proceedings.

(a) Subject to the provisions of this section, the Director shall commence proceedings on a complaint made by any person to the Director.

(b)(1) A complaint shall:

(i) be in writing;

(ii) state specifically the facts on which the complaint is based; and

(iii) be made under oath by the person who submits the complaint.

(c) The Director shall review each complaint and attempt to mediate the complaint between the complainant and the registrant or permit holder.

(d) If the Director is unable to mediate the complaint, the Director may:

(1) refer the complaint to the Office of the Attorney General for binding arbitration, if either the complainant, or the registrant or permit holder has requested binding arbitration, and both parties agree;

(2) initiate an investigation; or

(3) dismiss the complaint.

(d) If, after investigation, the Director determines that there is a reasonable basis to believe that there are grounds for disciplinary action under § 5-310 of this Title, the case shall be set for a hearing under § 5-312 of this subtitle.

(e) Any complaint, after being investigated, not set for a hearing by the Director shall be dismissed, and any party aggrieved by the decision may take a judicial appeal in accordance with the provisions of Title 10 of the State Government Article.

(f) (1) Once a complaint has been referred for binding arbitration, the registrant or permit holder must comply with the terms of the settlement.

(2) If a registrant or permit holder has failed to comply with the terms of the arbitration settlement, the Director shall, after the appeal period has passed, send the complaint in for a hearing.

(g) (1) The Director shall adopt guidelines that establish a schedule for the prompt and timely processing and resolution of each complaint made to the Director.

(2) On or before December 31 of each year, the Director shall report to the General Assembly on the number of cases resolved within the schedule adopted under paragraph (1) of this subsection.

5-312. Hearings.

(a) Except as otherwise provided in the Administrative Procedures Act, the Director shall provide an opportunity for a hearing prior to taking an action under § 5-310 of this subtitle.

(b) The Director shall give notice and hold a hearing in accordance with Title 10, Subtitle 2 of the State Government Article.

(c) If, without lawful excuse, a person disobeys a subpoena from the Director, or an order by the Director to take an oath or to testify or answer a question, then, on petition of the Director, a court of competent jurisdiction may punish the person for contempt of court.

(e)(1) At least 10 days before the hearing, the hearing notice to be given to the challenger shall be sent by regular and certified mail to the last known business address of the individual.

(2) If the challenger is affiliated with a permit holder, the Director shall give the permit holder notice of the hearing by sending the notice by regular and certified mail to the last known business address of the corporation, limited liability company, or partnership.

(f) If, after due notice, the challenger or permit holder against whom the action is contemplated fails or refuses to appear, the Director may hear and determine the matter.

(g) If, after a hearing, the proposed action by the Director is upheld, the challenger shall pay the hearing costs.

Subtitle 4. Permits

5-401. Corporations, limited liability companies and partnership operating cemeteries.

(a) Subject to the provisions of this section, a registered cemeterian or registered memorialist may engage in the operation of a cemetery or burial monument business, respectively, through:

- (1) a corporation as an officer, Director, employee, or agent of the corporation;
- (2) a limited liability company as a member, employee, or agent of the limited liability company; or
- (3) a partnership as a partner, employee, or agent of the partnership.

(b) Subject to the provisions of this title, a corporation, limited liability company, or partnership may engage in the operation of a cemetery or burial monument business through a registered cemeterian or registered memorialist, respectively.

(c) (1) A registered cemeterian who engages in the operation of a cemetery through a corporation, limited liability company, or partnership under this title is subject to all of the provisions of this title that relate to engaging in the operation of a cemetery.

(2) A registered memorialist who engages in the operation of a burial monument business through a corporation, limited liability company or partnership under this title is subject to all of the provisions of this title that relate to providing burial monument services.

(d)(1) A corporation, limited liability company, or partnership that engages in the operation of a cemetery or burial monument business under this title is not, by its compliance with this title, relieved of any responsibility that the corporation, limited liability company, or partnership may have for an act or an omission by its officer, Director, member, partner, employee, or agent.

(2) An individual who engages in the operation of a cemetery or burial monument business through a corporation, limited liability company, or partnership is not, by reason of the individual's employment or other relationship with the corporation, limited liability company, or partnership, relieved of any individual responsibility that the individual may have regarding that practice.

5-402. Permit required.

A corporation, limited liability company, or partnership shall hold a permit issued by the Director, before the corporation, limited liability company or partnership may engage in the operation of a cemetery or burial monument business.

5-403. Qualifications

(a) To qualify for a permit, a corporation, limited liability company, or partnership shall:

(1) designate a separate registered cemeterian as the individual responsible for the operations of each affiliated cemetery or burial monument business;

(2) provide the name and business address of each affiliated cemetery or burial monument business; and

(3) provide a list of the officers, Directors, members, partners, agents, and employees of the entity applying for the permit.

5-404. Application for permit.

An applicant for a permit shall submit to the Director:

(1) an application on the form that the Director provides; and

(2) an application fee as set established by the Director.

Subtitle 5. Miscellaneous provisions

5-501. Notice of change.

Within 1 week after the effective date of the change, a registrant or permit holder shall submit to the Director an application form that shows a change in:

(1) the registered cemeterian or registered memorialist;

(2) the affiliated cemetery or burial monument business;

(3) the registered cemeterian or registered memorialist designated as responsible for the cemetery operations or for providing burial monument services, respectively;

(4) a change in an employee who engages in the sale of goods or services to the public;

(5) a change in the officers, Directors, members, or agents of the permit holder;
or

(6) a change in the name or address of the registrant or permit holder.

5-502. Disclosure to consumers.

(a) Registrants and permit holders shall at the time of entering into a contract with a consumer for the sale of burial goods or services make the following written disclosures:

- (1) the itemized cost for each service performed under the contract;
- (2) a list of cost and services incidental to burial that are not covered by the contract;
- (3) a statement regarding the cemetery's policy on the use of independent monument companies; and
- (4) the name, address and telephone number for the State Office of Cemetery Oversight.

(b) Disclosure shall be conspicuously incorporated in the contract in no smaller than 12 point type.

(c) The disclosure must be signed and dated by the consumer.

(d) The consumer must be provided with a copy of the contract at the time of purchasing the burial goods or services.

(e) The disclosure shall occur not later than the first scheduled face-to-face contact with the purchaser or party representing the purchaser, or if no face-to-face contact occurs, at the time of the execution of the contract by the purchaser or party representing the purchaser.

(e) The Director, by regulation, may prescribe the form and wording of the disclosure.

(f) (1) If the purchase by the consumer includes a cemetery plot, the registered cemeterian or permit holder shall provide the consumer with a copy of a location survey which indicates the location of the purchased plot within the cemetery.

(2) The location survey shall be performed by a licensed land surveyor or by any other means approved by the director.

Subtitle 6. Prohibited Acts.

5-601. Practice without registration.

(a) Except as otherwise provided in this title, an individual may not engage in cemetery operations, attempt to engage in cemetery operations, or offer to provide cemetery goods and services unless the individual is a registered cemeterian.

(b) Except as otherwise provided in this title, an individual may not engage in a burial monument business, or attempt to provide burial monument services unless the individual is a registered memorialist.

5-602. Providing service without permit.

Except for a registered cemeterian or registered memorialist who operates a business as a sole practitioner, a person may not engage in the operation of a cemetery or burial monument business unless:

(1) the business is a corporation, limited liability company, or partnership; and

(2) the corporation, limited liability company, or partnership holds a permit issued under this title.

5-603. Misrepresentation.

Unless a person is a registered cemeterian or registered memorialist, a person may not represent to the public, by use of a title, including cemeterian, registered cemeterian, memorialist, or registered memorialist, by description of services, methods, or procedures, or otherwise, that the person is authorized to engage in the operation of a cemetery or provide burial monument services.

5-604. Penalties.

A person who violates §§ 5-602 and 5-603 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$3,000 or imprisonment not exceeding 1 year or both.

Subtitle 7. Short title; termination of title.

5-701. Short title

This title may be cited as the "Maryland Cemetery Act".

5-702. Termination of title.

Subject to the evaluation and reestablishment provisions of the Maryland program evaluation act, this title and all regulations adopted under this title shall terminate and be of no effect after July 1, 2007.

MINUTES OF TASK FORCE MEETINGS

TASK FORCE TO EXAMINE THE STATE'S CEMETERY AND FUNERAL INDUSTRY

MINUTES

Organizational Meeting, June 17, 1996

6:00 p.m. Shaeffer Tower

1. The Chairman, Edward Ranier, began the meeting with introductory remarks and discussed the objectives of the Task Force. The Chairman stated that he viewed the Task Force's primary goals as reducing costs and educating consumers. In addition, the Chairman stressed the importance of achieving consumer protections and other meaningful safeguards while still allowing free enterprise. Finally, the Chairman concluded his remarks by raising the issue of what type of enforcement mechanisms should be in place for regulating the cemetery industry.
2. Members of the Task Force introduced themselves and provided a brief summary of their funeral and cemetery background. In addition, members of the public in attendance also introduced themselves and provided their background information.
3. The Chairman stated that in Maryland, there is a regulatory scheme in place for funeral directors and funeral services but nothing for cemeteries. He proposed that the Task Force answer the cemetery question first, then the pre-need issue, and then any other issues determined to be necessary by the Task Force. A discussion was held and a proposal was made in the interest of the time constraints of the Task Force to divide the Task Force into work study groups to address the specific requirements of HB 304; to assess and recommend action concerning both the funeral and cemetery industries; and to address the specific line items enumerated in HB 304. After discussion by the Task Force on the Chairman's proposal, the Task Force agreed to use this structure as their agenda for conducting business.
4. The Task Force agreed that the second meeting would be a public hearing held in Annapolis where testimony could be presented by interested members of the public. At the third meeting, Thomas Murphy, Chairman of the State Board of Morticians, agreed to give a presentation on the practice of Mortuary Sciences in the State of Maryland.
5. Ross Goldstein, Co-Counsel to the Task Force, gave an overview of selected state laws on the topics of the regulation of cemeteries, funeral directors, and pre-need contracts.
6. The Chairman asked that copies of the Pennsylvania Law governing cemeteries and pre-need sales be distributed to members of the Task Force.
7. Rebecca Bowman, of the Consumer Protection Division of the Attorney General's Office, suggested that copies of the AARP model law on the sale of pre-need funeral, burial or cemetery goods or services to be distributed to members of the Task Force.

8. The question was raised as to who can sell pre-need goods and services in the State of Maryland. Delegate Morhaim stated that there is an Attorney General's opinion that clarifies this issue and requested that this opinion be located and provided to the members of the Task Force. Delegate Morhaim also noted that State law used to separately license and regulate morticians and funeral directors and questioned whether the Task Force should consider returning to such an approach. Senator Madden stated that his main concern was consumer protection.

Rebecca Bowman raised the issue of the differing treatment between profit, non-profit, and religious oriented organizations. She requested information on whether other states make the same differentiations. Delegate Harrison raised the issue of whether other states have a bill of rights for consumers of funeral and cemetery services. Dr. Smialek suggested that the research of comparing other state approaches be expanded to include all 50 states.

9. Finally, the Task Force agreed that the next meeting will be at the end of July and that after the public meeting the Task Force will meet twice a month on Monday nights at 6:00 p.m. at different locations around the State. The Chairman also asked members to gather information that might be helpful and to provide that information to the Task Force Counsel.

Revised 7/3/96

Task Force Meeting #3
August 5, 1996
Prince George's County Executive Conference Room

1. Opening remarks by the Chairman.

- The Task Force voted to accept Mr. Brown's invitation to visit Dulaney Valley Memorial Park. The Chairman directed Ms. Mitchell to set up this meeting, prior to the next Task Force meeting, on a weekday after 5:30pm.

- The Chairman informed the Task Force that Meredyth A. Smith, an Assistant Attorney General with the Antitrust Division, offered, by letter dated July 25, 1996, her services and expertise to the Task Force relating to antitrust issues that may arise with respect to legislation proposed by the Task Force.

- The Chairman read to the Task Force a letter from SCI Virginia Funeral Services, Inc. responding to the solicitation by the Gardens of Faith Cemetery of the friends and family of Ms. Kielek shortly after attending her daughter's funeral. The letter explained that the actions of the Gardens of Faith salesman were not condoned by the company nor is that practice acceptable to them. According to the letter, they have reprimanded the employee and have apologized to Ms. Kielek.

- The Chairman informed the Task Force that he had received a tape from the Mark Steiner Show that dealt with Maryland funeral and cemetery issues. The Chairman made this tape available to members of the Task Force at their request.

- The Chairman stated that during the next Task Force meeting, the Task Force will begin to discuss which recommendations will be in the Task Force's proposal regarding cemetery regulation. To this end, the Chairman requested that recommendations be made by members of the Task Force and sent to staff who will distribute the recommendations at the next meeting. The Chairman emphasized that simplicity is the key, with an emphasis on public notice and protection. The Chairman itemized four concerns:

- (a) Protect consumers;
- (b) Provide notice to consumer as to what they are buying and what they are paying for;
- (c) Provide consumers with a means to address complaints, either by a board, administrator, dispute resolution committee, or any other simple way to address consumer complaints; and
- (d) Provide a method of enforcement, such as criminal or civil penalties.

2. The Task Force then watched a video submitted by Ms. Jacoby showing one consumer's allegations of switching burial sites, improper burials, and possible recycling of graves.
3. Thomas Murphy and Liz Groninger gave a presentation outlining the organization, responsibilities, and enforcement activities of the State Board of Morticians.

- Ms. Groninger informed the Task Force that the Board receives complaints in writing in a form that they provide. The complaint is then assigned to the Complaint Committee which meets once a month prior to each regularly scheduled Board meeting. The Complaint Committee tries to determine if a violation of Title 7 of the Health Occupations Article has occurred. Most complaints are dismissed after the initial review. The Board employs a part-time investigator who does investigations into complaints when necessary. Morticians have 15 days to respond to complaints so that the committee has all of the information it needs to make an assessment as to what action to take. The Committee makes its recommendation to the Board who can either accept or reject the recommendation, or make a new recommendation of its own. There is one consumer member on the Complaint Committee.

- Ms. Groninger, responding to questions by Task Force members, stated that the Board of Morticians has 15 ongoing complaints that are being investigated. Mr. Murphy estimated that the Board gets an average of 5 complaints a year.

- A question arose as to what the Board of Morticians does if it receives a complaint about a cemetery. Mr. Murphy responded that in this instance the complaint is referred to the Consumer Protection Division of the Attorney General's Office. Ms. Bowman then responded by explaining that complaints handled by her office can either be dealt with through binding arbitration or court. The majority of complaints that they deal with are related to unfair and deceptive trade practices. Ms. Bowman also pointed out that there are far too many complaints for the Consumer Protection Division to prosecute. Ms. Bowman also noted that the Consumer Protection Division refers many people to the Better Business Bureau or to a cemetery association.

- Ms. Bowman asked for clarification on the oversight function of the Board of Morticians with respect to pre-need trusting. Ms. Groninger responded by saying that the Board has authority to inspect the records of each funeral home. The Board's inspector inspects each funeral home's records annually and has the authority to inspect them at random. The investigator fills out a form that is sent to the inspection committee. A question arose as to the length of time each annual inspection takes. Ms. Groninger replied that the average inspection only takes an hour and a half.

- Another question arose as to the cost of maintaining the Board of Morticians. Mr. Murphy responded that the annual budget was \$245,000. The Board receives no

funding through tax dollars. Instead, the Board is funded directly from the licensing fees of the 260 licensed funeral homes and approximately 1,400 licensed funeral directors, morticians, and apprentices.

- Mr. Brown suggested that the cemetery requirement that pre-need information be completed by a Certified Public Accountant should also be required for funeral directors and morticians. The Chairman requested that this topic be put off until the Task Force was ready to focus on the pre-need issues.

- Ms. Suskin expressed concern regarding the length of time that complaints were pending with the Board of Morticians and felt that consumers needed a more rapid response and resolution to their complaints.

- The point was raised as to the cost benefit of running a board considering the delays involved in resolving complaints. In response to this, the Board of Morticians encourages arbitration as a less costly and effective way to solve problems.

- Ms. Bowman suggested that consumers need a private right of action as an ultimate redress.

- Senator Madden expressed concerns that the idea of a creating a board had already been rejected, especially by the Chairman. The Chairman clarified that he had not unilaterally decided to eliminate the possibility of a board. However, the Chairman did point out that most of the comments and suggestions that he had received indicated that people generally thought that a board was too costly and cumbersome. The Chairman stressed that the idea of creating a board could be discussed. Senator Madden accepted the Chairman's response and added that while he had proposed creation of a board in legislation last year, he was open to other worthwhile suggestions.

- Ms. Bowman indicated that the AG's office supported a board since the AG's office cannot oversee the reporting and the investigation that needs to occur on a regular basis. The AG's office believes that there needs to be a centralized body for consumers, however, they also understand the need to work within tight fiscal constraints.

- A question arose as to why Senator Madden's legislative proposal last year only regulated for-profit cemeteries when there were only about 50 odd for-profit cemeteries out of over 1,400 cemeteries in the State. Senator Madden responded that this decision was based on information that he received that the majority of problems came from for-profit cemeteries. He asked Ms. Bowman to provide information on the ratio of complaints between for-profit and non-profit cemeteries. Ms. Bowman agreed to gather information, and also added that the AG's office supported regulation of the entire cemetery industry.

•Senator Trotter asked for clarification on the differences between using a board versus a commission. Ms. Donaldson responded by saying that the Department of Labor Licensing and Regulation did not support the creation of a board. They believe that a board is only necessary when there is a high level of expertise surrounding the industry that requires technical education or an examination. She felt that an appropriate avenue would be to authorize an administrator to have the same authority as a board and to require a registration that could be revoked.

•Ms. Suskin questioned whether there were drawbacks to an administrator for industry or consumers. She pointed out that most boards are industry dominated. Joe Jenkins responded that on the State Board of Morticians, consumers have a tremendous impact since the Board is complaint driven. He believes that cemeteries need more than just a registration. He feels that they need set standards and guidelines. For example, a cemetery should not be permitted to cover an adjoining grave during an interment.

•Ms. Donaldson suggested that there could still be qualifications set for registering, however, they would be less than licensing.

4. The Chairman then asked Ross Goldstein to give a brief presentation on the bonding requirements Maryland Law has established for providers of Health Club Services.

•Mr. Goldstein explained that each provider of Health Club Services (hereinafter provider) was required to register with the Consumer Protection Division of the Attorney General Office. In addition to a registration fee, the provider is required to obtain a surety bond in an amount equal to the outstanding liabilities to consumers. In lieu of the bond, the provider can give a letter of credit or cash to the Division. The maximum amount that a provider will be required to secure is \$200,000 per facility. The amount of the bond or other security is based on a report completed by a Certified Public Accountant for the provider which is filed with the Division.

•Ms. Bowman was asked if she had any comments regarding the bonding of Health Club Services. She responded by saying that the program was working very well, but cautioned that it was not necessarily a good parallel given that the amount of money involved for pre-need is much greater. She also stated that the AG's office would not want to be responsible for overseeing and regulating the bonds since this is really beyond their scope. A question was asked whether the AG had ever had to file a claim against a surety of a bond. Ms. Bowman said that this had occurred and pointed out that the individual consumer has the right to go against the bond. However, if the bond does not cover the full amount of the liabilities, consumers only get a pro rata share. In addition, bonding does not address the problem of refundability, only failure to perform.

•Dave Mason, a bonding agent who was in the audience, went over the different types of bonds available and then pointed out that it is very difficult to qualify for a bond because bond underwriters require that the entities wealth is the equivalent of the bond.

5. The Chairman made a summation and again reminded the members of the Task Force to submit recommendations.
6. The Task Force voted that future meetings should be held in Annapolis.

TASK FORCE TO EXAMINE THE STATE'S CEMETERY AND FUNERAL INDUSTRY

MINUTES

August 19, 1996

MEMBERS PRESENT

Edward Ranier, Chairman
Honorable Dan K. Morhaim
Honorable John J. Hafer
Honorable Martin G. Madden
Honorable Decatur W. Trotter
David Michael Goodman
Frank A. Porter
Susan E. Elson
Michael Raymond Lachance
Lisa E. Maddux

Harriet K. Suskin
Judith Black Donaldson
Frank J. Markowski
Frank R. Haswell
Charles S. Brown
Earl L. Canapp
Bernie Dubrowski
(for Thomas J. Murphy, III)
Dr. John Eugene Smialek
Joe Jenkins, III

The meeting was convened at 6:00 p.m. by the Chairman, Edward Ranier, who stated that the business of the evening would be to briefly present the Task Force's legislative proposals on cemetery regulation. The Task Force would then be asked to review the proposals before the next meeting. He asked the Department of Legislative Reference to make a spreadsheet comparing the proposals and mail it to the members for their review as soon as possible.

The planned September 25, 1996 site visit to the Dulaney Valley Memorial Park in Timonium was discussed. The members will meet in the office of the cemetery at 6:00 p.m.

Rebecca Bowman of the Attorney General's office was ill and could not make the meeting. However, she sent comments through the Chairman. According to Ms. Bowman, 82% of the complaints that the Consumer Protection Division receives pertain to for-profit cemeteries. A good portion of these were for Maryland National Memorial Park. If Maryland National Memorial Park was removed from the equation, 75% of the complaints would concern for-profit cemeteries. Ms. Bowman asserts that all cemeteries should be covered by legislation regulating cemeteries although registration fees might be waived for nonprofit and religious cemeteries.

Judy Donaldson, from the Department of Labor, Licensing, and Regulation (DLLR) made the first presentation. The proposal called for an Office of Cemetery Oversight (Office) with a full-time director appointed by the director of DLLR with the approval of the governor. The Office would be specially funded, paid for by registration fees, and would use no other state funds. The Office could set fees and formulate a code of ethics and performance with oversight by the Administrative, Executive, and Legislative Review Committee. The director would have the

authority to investigate, subpoena records, and hold hearings. There would be a two-tiered system of registration which would include corporations and individuals. A corporation would name all officers and partners and also name a person responsible who would then have to register as an individual. The director would be required to mediate all complaints, but if unsuccessful, could send the parties to binding arbitration. The Office could collect fines as penalties with the monies going into the general fund instead of back to the Office. The actual burial site would have to be disclosed in writing to the consumer. Every consumer would also be given the address and phone number of the Office of Cemetery Oversight.

The Chairman asked Ms. Donaldson to explain the procedure for a consumer filing a complaint. She indicated that a consumer would file a complaint with the Office of Cemetery Oversight. The Director would then contact the cemetery and attempt to mediate a resolution, begin an investigation, accept a request for arbitration, or recommend an administrative hearing. The final action would be taken by the Director, whether to reprimand, revoke, or levy a civil penalty. All appeals are at the Circuit Court level. Mr. Goodman asked whether the proposal included any time requirements for handling a complaint. Ms. Donaldson said no, but indicated a willingness to add in a 30-60 day response to complaints. Dr. Smialek questioned the flexibility of the complaint process during the preliminary investigation. The response was that mediation would be the first preference because of cost effectiveness, but the Director would have the discretion to investigate first.

In response to a question from Ms. Elson, Ms. Donaldson indicated that specific performance could also be an option for a remedy, in addition to restitution or monetary damages. Mr. Markowski expressed concerns regarding the disclosure requirements and whether those requirements would necessitate that a consumer visit the cemetery. He also indicated an unwillingness to have a third-party (a funeral director) provide a disclosure on behalf of a cemetery. Ms. Donaldson expressed a desire to work with members of the industry to provide a solution to this dilemma, but envisioned the disclosure as part of the contract. Mr. Haswell inquired as to whether other industries were required to tell a consumer that you can buy these same goods from another purchaser. Ms. Donaldson agreed to research the matter.

Senator Madden asked how this proposal had been developed and if there was an existing board or commission that was comparable. Ms. Donaldson said that the proposal was a conglomerate of existing provisions from several boards and commissions within DLLR, and that it most closely resembled the Board of Architects or Land Surveyors. In response to a question regarding costs, Ms. Donaldson agreed to provide a fiscal estimate at the next meeting. She indicated that the fiscal analysis would depend on whether the Task Force intended to regulate the entire industry, including non-profit and religious cemeteries. Currently, all fees charged by boards and commissions at DLLR are on a flat scale as opposed to a graduated scale. With respect to investigative costs, the Office would utilize the existing pool of investigators within the Department. Ms. Donaldson stressed that this was a first attempt at a rough proposal and that she would be happy to accept comments.

The next presentation was given by Devin Doolan who represents the Maryland Free State Cemetery Association. After listening to the debate on bills introduced concerning cemetery and funeral regulation in the 1996 Legislature, Mr. Doolan's office decided to look around to other states to try to find legislation which was working. They felt Ohio had legislation that was working well and patterned their proposal on that legislation. The proposal creates a Commission where people can go with a complaint concerning a violation of a law or ethical standard. The Commission can conduct public or private hearings. Reasonable complaints are settled and unreasonable complaints are dismissed. Matters can also be referred to the State's Attorney, the Attorney General's Office or the Maryland Secretary of State. Under current Maryland law, the Secretary of State has regulatory control over certain aspects of cemeteries. Mr. Doolan believes we are living in an age where the public does not want more government and that the Ohio approach is working well. Mr. Doolan's proposal that 5 of the 7 members of the Commission come from the Free State Cemetery Association drew comments from Senator Madden questioning the effectiveness of that for the consumer. Mr. Canapp said he had visited Ohio and was told that the law was not working. Mr. Doolan said that the overwhelming majority of cemeteries do make disclosures, but if it is found that there are substantial abuses, the Association would support more regulation.

Mr. Earl Canapp's proposal was presented by Mr. James J. Doyle of the Maryland State Funeral Director's Association (Association). The Association thinks that the model which exists for Morticians is the approach to take.

The Association's proposal calls for a State Board of Cemeteries to be created within the Office of the Secretary of State. Mr. Doyle began by first pointing out some problems with the Ohio model. A cemetery complaint commission would not have the real authority that a State board would have, and therefore, would not be able to adopt substantive regulations. Mr. Doyle believes that boards need the authority to declare that certain activities are illegal. Moreover, he expressed concern that the Ohio model's only final action is to dismiss a complaint or refer it to a government agent for prosecution. On the other hand, a board would have the authority to conduct a hearing and resolve the dispute. The Board would be funded by license fees and would require that all operators and sales persons be licensed. There would be provisions for revocation and suspension of licenses. Price disclosures would be required, owners and operators would be responsible for the people working under them, and the Board would have authority to regulate solicitation. The Chairman asked for an explanation of the complaint procedure. Mr. Doyle explained that a consumer would file a complaint with the Board. The Board would request documentation from the cemetery and ask the cemetery to respond. An investigator would review the information and determine whether charges should be filed. A full hearing process would ensue with an appeal to the Circuit Court. In response to a question from Mr. Goodman, Mr. Doyle indicated that a code of ethics, continuing education, and training requirements could be determined by the Board by regulation. Mr. Brown also expressed some concern with the disclosure requirements by indicating the difficulties with providing an express price lists.

Joe Jenkins, III said everything in his proposal had already been covered by others, but specifically wanted the Task Force to keep the sensitivity of the consumer in mind when drafting legislation. He called for all cemeteries to be licensed as non-licensed cemeteries cannot be

regulated. Mr. Dubrowski added that the State Board of Morticians has no position regarding Mr. Jenkins' proposal.

Ann T. Bentley of the Prince Georges County Office of Business and Regulatory Affairs spoke next. Her proposal emphasized the need for complete disclosure to the consumer. Ms. Bentley said the visit to the funeral home at the time of death in a family is often the only time people come in contact with the information about the cost of these goods and services. Prince Georges County has a new law about the written disclosure statement. After seeing what is being disclosed in the County, there is some feeling that the law needs to be even tougher although there are no present plans to push for this. She also recommended that stiff penalties be put in place so that each violation be considered a separate offense and that imprisonment be a possible punishment.

Mr. Albert Bartles spoke of a cemetery which was incorporated in early 1900. The owner has the authority to create by-laws as long as they are not inconsistent with the laws of the State of Maryland. The cemetery is now associated with a church which has taken most of the money from the cemetery to use for the church. Mr. Bartles said there is not enough money left in the cemetery fund to take care of it. He is urging that all cemeteries, whether religious or nonprofit, be covered in whatever legislation the Task Force recommends be enacted.

Mr. Ranier asked again that members study the proposals, that DLR work up a spreadsheet, and adjourned the meeting.

TASK FORCE TO EXAMINE THE STATE'S CEMETERY AND FUNERAL INDUSTRY

MINUTES

September 18, 1996

Members Present

Edward Ranier, Chairman
Senator Madden
Senator Hafer
Delegate Morhaim
David Goodman
Frank Porter
Michael Lachance
Sheila Stewart-Duncan
Harriet Suskin
Susan Elson

Frank Markowski
Frank Haswell
Earl Canapp
John Smialek, M.D.
Thomas Murphy
Charles Brown
Joe Jenkins
Judith Donaldson
Rebecca Bowman

The meeting was convened at 6:07 p.m. by the Chairman, Mr. Edward Ranier. The minutes from the previous meeting were approved. Mr. Ranier stated that during this meeting he was going to try to achieve a consensus on the proposals determining the structure of the regulatory body over cemeteries. When that was reached, Legislative Reference would be directed to rewrite the proposal to include whatever modifications the Task Force agreed upon.

Mr. Ranier stated that he had agreed to hear from four witnesses. The first would be a representative from the monument industry, the second would be Mr. Goodman to discuss the Oregon statute, the third would be Ms. Donaldson to answer questions from the previous meeting, and the fourth would be Ms. Bowman, also to answer questions.

Ms. Bowman said she had talked to Meredyth Smith from the Anti-Trust Division and there were some concerns raised about the fees charged to outside memorial companies to place memorials in cemeteries. Ms. Smith would like to speak to the Task Force before they make a decision on this issue. She recommended that those provisions not be included in the proposal to determine structure. Mr. Ranier stated that this was a reasonable request because the Task Force does not want to conflict with anti-trust laws. There were no objections.

Mr. Robert A. Silkworth spoke first as a representative of the memorialist industry. He had previously submitted an analysis of the proposals which the Task Force was considering and proceeded to read from that analysis. He first covered the proposal of the Free State Cemetery Association which had been presented by Mr. Doolan. Mr. Silkworth believes the cemeterians want to control the regulatory board established in the Doolan proposal. He is also critical that no memorialists are included on this board. According to Mr. Silkworth, Mr. Doolan's proposal has the

following flaws: (1) the funds to run this entity will come from the State of Maryland or a surcharge; (2) the board has the power to dismiss complaints; (3) there is no disciplinary policy spelled out; and (4) there are no disclosure or consumer education requirements; (5) it can take up to 6 months to resolve a dispute; and (6) the board is allowed to generally do as they please.

Mr. Silkworth would support Ms. Donaldson's proposal with some modifications. He would want the Director to be assisted by cemeterians, memorialists, morticians, and consumers. Mr. Ranier asked Ms. Donaldson if the Director would have an advisory board. She said the Secretary of the Department of Labor, Licensing and Regulation (DLLR) already has the authority to appoint an advisory group or council. If the Director needs some specific form of expertise, an advisory group could be created for that purpose without creating a permanent structure of government. Mr. Silkworth specifically wants his Bill of Rights and a code of ethics included in whatever plan is adopted and he does not want the Director to have the sole power to set policy.

Mr. Goodman was commended for his research and work for the Task Force. He has investigated the Oregon statute and feels there is much to recommend in their approach. Prior to 1984, Oregon had two separate boards, one to regulate cemeteries and one to regulate morticians. After several crises in the death-care industry, they created one board to oversee both cemeteries and morticians. Mr. Ranier asked what the crises were. Mr. Goodman said it was his understanding that bodies were being improperly handled. A group of widows had formed a citizens watch group which led to the new legislation. In Oregon, the structure is a board which handles complaints, biennial inspections, examinations, etc. The board consists of 11 members with 5 support staff. The board meets 6 times a year. A complaint form can be filled out by a consumer and handled immediately with the main focus to mediate an agreement between the parties involved. The board has the power to apply sanctions. One of the advantages to the Oregon approach is it provides one umbrella organization that the consumer can turn to for help. The Oregon Board is well represented by consumers. The Board publishes a newsletter four times a year which is available to the industry and the public. Criminal background checks, conducted by the board, help weed out people who have caused problems in the past.

Mr. Goodman stated that Maryland is not alone in examining the death-care industry. The large corporations owning funeral homes and cemeteries have changed the industry. In Mr. Goodman's opinion, an approach such as Oregon's is a good platform from which to look at the changes that are happening.

Delegate Morhaim asked what the weaknesses of Oregon's plan were. Mr. Goodman answered that auditing the death-care industry was not done under this board, but was instead under the office of the Secretary of State. The Secretary of State's office only has one part-time auditor so basically no auditing was taking place. Mr. Goodman also indicated that memorialists had no place in the Oregon structure, but added that we could include them in our plan.

Mr. Ranier had received a letter from Ms. Bean-Dempsey concerning a personal experience with Meadow Ridge Cemetery. Ms. Bowman said her office was already looking into this matter.

Ms. Donaldson from DLLR answered the questions asked from the last meeting as follows:

(1) Would there be a time limit requirement on handling complaints? She read from the section regarding time limits for real estate complaints. In her opinion, a time limit might actually hurt the consumer because the entity the complaint was lodged against might have an out if an agreement could not be reached within the specified time limit. Moreover, there is no way to enforce a time limit.

(2) Would the disclosure requirements require a visit to the cemetery? No. The Real Estate Commission requires that disclosure be made not later than the first face-to-face visit or before execution of the written contract. The consumer should not have to go to the cemetery. Again, Ms. Donaldson expressed a willingness to work with members of the industry regarding this issue.

(3) Are other industries required to disclose that you can buy goods from other sources? The closest example would be the real estate industry where realty companies are often tied to title or mortgage companies. There is a required disclosure that other sources can be used. Ms. Bowman said that this type of disclosure is related to the anti-trust issue and the discussion should be tabled until Ms. Smith of the antitrust division comes before the Task Force.

(4) Could you give a fiscal estimate of the cost of your proposal? Ms. Donaldson had passed out a list of sliding fees and will make models (from health clubs) available to the members.

Ms. Donaldson pointed out that this is still a draft. In order to get her projected costs, she used the Department of Fiscal Services methodology. Her cost estimate would be around \$189,000 for each of the first two years and \$141,000 yearly after that. In the Department of Labor, Licensing, and Regulation, a Director who makes policy is in the \$65,000 - \$85,000 salary range. One clerical employee would be needed. Her plan would try to function with the investigators already in DLLR, but allowance is made for a part-time investigator. If the cost is broken down into a flat fee for all cemeteries, it would cost \$150 a year for the first two years and \$100 a year thereafter. Ms. Donaldson sees the Director as reviewing inspection and background reports himself. Presently background checks cost the Department \$47 per investigation. The only other area where background investigations are required is in the field of precious gems, pawnshops, etc., because of the nature of their business. The Task Force should consider whether the background check is necessary considering the costs involved.

From three different types of audits that could be performed, Ms. Donaldson recommended that the audit be performed by a CPA (the most stringent of the three audit types) in order to have an independent judgment made. Mr. Ranier asked the purpose of the audit. Ms. Donaldson replied that it was to make sure the cemetery was financially sound. Mr. Ranier asked how often the audit would be performed under her plan. Ms. Donaldson replied that it would be performed with the initial registration and every two years thereafter.

Ms. Donaldson said that binding arbitration is now being used in disagreements concerning new home sales. The cost for this is \$350 up-front with the loser generally reimbursing the cost.

Ms. Bowman said that the Attorney General's (AG) office has a full-time arbitrator who is free to both parties. The arbitration is usually done within 30 days of a complaint. However, the arbitrator is taking early retirement and it is unknown whether the Governor will budget another one. The AG's office may have to figure out another way to get an arbitrator. Ms. Donaldson thinks arbitration would be the preferable way to handle a complaint because restitution could then go to the complainant whereas with a fine, the money would go to the General Fund.

Delegate Morhaim asked if there was enough work to justify a full-time Director. Ms. Donaldson answered yes. Delegate Morhaim asked if there would be a methodology to reduce the Director from full-time status if the number of complaints are reduced. Delegate Morhaim expressed concern regarding the frequency of audits on cemeteries. He asked if the audit could be requested at the discretion of the Director. Ms. Donaldson said DLLR would be agreeable to this.

Ms. Bowman pointed out that the need for financial accountability is higher for those selling preneed and perpetual care. Standards to go by are also needed. Ms. Elson said that audit requirements already exist for those selling preneed goods and perpetual care under current law. Mr. Haswell agreed and said cemeteries that sell these services are already filing reports. Mr. Ranier suggested that since this is already required, audits could be performed for other cemeteries at the discretion of the Director. Ms. Donaldson said the Director would have the power to look at any records at any time.

Senator Madden cautioned against putting additional rules and regulations on cemeteries that are not causing problems.

Ms. Bowman recommended that every cemetery be required to register. A minimal process should be in place to ensure that the mediator knows who the contact person is at the cemetery. Preneed and perpetual care cemeteries would need more scrutiny.

Senator Hafer said there are a lot of cemeteries who don't have anyone in charge who can register as a contact person. Senator Madden suggested keeping nonprofit and religious cemeteries out of the registration process. Mr. Brown said he personally has looked into some complaints where he cannot find an owner of the cemetery. Mr. Brown also asked how the Task Force was defining nonprofit and for-profit. Mr. Markowski said there are two kinds of nonprofit cemeteries, religious nonprofits and other nonprofits including family-owned, municipal, or state cemeteries. In a religious cemetery you can go to the rabbi, priest, or pastor with your concern. The majority of the religious nonprofit cemeteries are 1 acre or less. There may be a problem with nonprofits founded in the early 1800's.

Ms. Bowman also expressed the concern that there not be more regulation than is necessary.

Mr. Ranier said that there seems to be a consensus that consumers need a place to go to with complaints for mediation and then arbitration if both parties agree to it. There was no objection to that statement.

Mr. Haswell asked if the board members (advisory council members) in DLLR are paid. Ms. Donaldson said that they were until the budget problems 5 or 6 years ago. Now they only get expenses (travel). The Department of Health and Mental Hygiene still pays their board members.

Mr. Ranier asked Delegate Morhaim what his feelings were concerning a board versus a Director in the context of passing legislation. Delegate Morhaim said that boards are used in Maryland where there is a professional component. DLLR regulates commerce. A single board that would encompass the entire death-care industry (morticians and cemeteries) is probably more than the Legislature is ready for now.

Mr. Ranier said that it appears a plan with a Director would theoretically have more chance of getting through the Legislature.

Senator Hafer said that cemeteries could effectively be regulated under the Donaldson approach. He can see problems existing where cemeteries and funeral homes are connected.

Mr. Haswell expressed concern about the high costs involved for cemeteries, including the audit fees, registration fees for every employee, etc. Mr. Murphy explained that if the purpose is to protect consumers, then we must recognize that protection costs money. It's part of the cost of doing business and we can't worry about whether the cost is passed down to consumers.

Ms. Suskin asked what the Board of Morticians does with the \$225,000 in their annual budget. Mr. Murphy explained that a \$30 per diem is paid to Board members, other expenses include indirect costs such as rent and operating expenses.

Ms. Donaldson further elaborated by describing indirect costs as legal services, public relations, general services, print shop, and mail. These are the services that a Department provides that are charged back to the units. She believes the indirect costs incurred by an Office of Cemetery Oversight would be minimal.

Mr. Canapp asked Ms. Donaldson who could be required to register under her proposal, cemetery operators or salespersons or both. It's not clear from the language.

Mr. Ranier wanted to settle on an overall concept and felt there was a consensus for a Director with an advisory board. He asked if anyone disagreed. Ms. Suskin did not want Mr. Goodman's proposal of one Board regulating the entire death-care industry to be disregarded. She believes this idea would better serve the consumer. Mr. Ranier expressed understanding of this and sees a lot of merit in Mr. Goodman's proposal, but in the practical sense would like the Task Force to come up with a concept that has a chance of passing the legislature. The Task Force is charged with protecting consumers and we can't do it if we can't get something passed by the legislature that will handle consumer complaints. Mr. Ranier feels a partial solution to keep consumers from going from pillar to post would be language putting the onus on the Board of Morticians or the director of this office to refer complaints where they belong. Delegate Morhaim added that we can direct them to collaborate. Ms. Bowman agreed and suggested that it reflects

Senator Hafer's concern that the industry be well defined so we can ensure that we know where everyone is regulated.

Mr. Haswell disagreed with the concept of a Director and wanted to be given time to speak on the issues. Mr. Ranier asked if he could have a consensus that the initial structure would be limited to cemeteries with a proviso to protect the consumer. Mr. Markowski asked if the Task Force would be recommending this structure permanently or temporarily with a combined board in the future. Mr. Ranier answered that the structure should regulate cemeteries only at this time; something that will work now. Mr. Markowski suggested that the report to the General Assembly reflect this. Delegate Morhaim foresees the Director (if it is established) and the Board of Morticians coming together at some point but it will take time.

Mr. Haswell stated that he hoped the Task Force would not run out of time and thereby avoid the issue of funeral directors. Delegate Morhaim stated that we were following our initial plan to address cemeteries, preneed, and end with funeral directors.

Mr. Haswell again expressed a negative reaction to the Director concept saying that it would be a political appointment and thinks a Board would better serve the consumer. He listed as reasons to propose a board as (1) it would serve at no cost; (2) the members can spend the time and have the expertise and knowledge of the industry to handle complaints; and (3) boards have worked in other states.

Ms. Sheila Stewart-Duncan also expressed concern about having a Director because of possible bias toward the industry. She thinks there should be an annual meeting for input from citizens as well as the industry. Ms. Suskin called for an entity that will have enough teeth to be effective. Ms. Donaldson pointed out that a Director could handle complaints on a daily basis, as opposed to a Board that only meets 6 times a year. Delegate Morhaim said that many elements of commerce are regulated very well by DLLR. Mr. Lachance pointed out that two important pieces of legislation were passed last year that came from the work of an advisory council.

Delegate Morhaim reiterated his belief that political problems will arise if Directors do not work well with their advisory groups. He firmly believes this proposal can work well as it already does in other industries.

Mr. Brown asked who would be the Director and whether people would have a problem with a cemeterian in that position. Ms. Donaldson responded that a professional director cannot have financial involvement with the industry as a general rule.

Mr. Jenkins expressed concern regarding the importance of committees under a Board scenario. Ms. Donaldson indicated that the Director could convene as many advisory groups as necessary. Mr. Murphy suggested that at least one consumer member be part of any advisory group. Ms. Donaldson stressed the importance of the advisory council and that the Director would rely heavily on them. Mr. Lachance added that most regulators could not operate without input from the industry. Mr. Jenkins asked what is the difference between a Board and a Director who has an

advisory council. Ms. Donaldson stated that the Director would have the sole authority as a professional unbiased administrator, and would convene the council for advice. Del. Morhaim named other industries where this scenario works, including the Insurance Commission. Ms. Donaldson added that a board is only necessary when an examination is required for a professional license. Mr. Jenkins asked who would appoint the advisory council and Ms. Donaldson indicated that she would let the Task Force know.

Mr. Goodman said he thinks the deficiency in the proposal is the ambiguity of the advisory group. He finds it difficult to think of cemeterians as just businessmen by nature of the work they do. He would like to see the best proposal the Task Force can come up with but is also a practical man. His main concern is that the consumer have a place they can take their complaints and get results, whether it be a director or a board.

The Chairman asked Mr. Goodman if he would feel more comfortable if we defined the make-up of the advisory group to include more consumer members. Mr. Goodman said that he did not want to just be pragmatic, but wanted to recommend a more ongoing study. Delegate Morhaim stressed that pragmatic can pass the legislature and get the job done. Mr. Brown asked Ms. Donaldson if an advisory council could overrule a Director. Ms. Donaldson answered no. Mr. Goodman asked how you insulate the director from the political process. Several members said that doing that completely was impossible. Mr. Haswell said that with a board you can avoid the situation by staggering the member's appointments.

Mr. Ranier than asked for a vote purely on the structure of a director with a strong advisory council versus a board. The vote was 11 to 6 for the director divided as follows:

<u>Board</u>	<u>Director</u>
Ms. Suskin	Ms. Stewart-Duncan
Mr. Porter	Mr. LaChance
Mr. Goodman	Ms. Elson
Mr. Haswell	Mr. Ranier
Mr. Brown	Mr. Markowski
Mr. Jenkins	Delegate Morhaim
	Mr. Canapp
	Mr. Murphy
	Dr. Smialek
	Ms. Donaldson
	Ms. Bowman

Senator Hafer abstained and Senator Madden was not in attendance when the vote was taken. Soon thereafter, Mr. Ranier adjourned the meeting with promises of members filling in more details of the concept at the next meeting.

Corrected 10/3/96

TASK FORCE TO EXAMINE THE STATE'S CEMETERY AND FUNERAL INDUSTRY

September 30, 1996

Minutes

Members Present

Edward Ranier	Frank Markowski
Delegate Harrison	Frank Haswell
Delegate Morhaim	Earl Canapp
Senator Hafer	Thomas Murphy
Senator Madden	John Smialek, M.D.
Senator Trotter	Charles Brown
David Goodman	Joe Jenkins
Sharon Mobley (for Susan Elson)	Lisa Maddux
Michael LaChance	Margot Gilison
Harriet Suskin	Rebecca Bowman
Judy Donaldson	

The Chairman stated that the Task Force would be working on the Donaldson proposal which was adopted at the last meeting. Any amendments or proposed changes would be discussed and a vote would be taken. Then, the Department of Legislative Reference will draft something that will be presented for a final review to the Task Force.

The minutes from the previous meeting were approved. The next meeting is scheduled for Tuesday, October 15, 1996 and will be a public hearing on preneed issues.

Mr. Haswell was given the opportunity to speak on some of the issues raised by monument dealers. He referred to an earlier summarization that he submitted for distribution to the Task Force outlining a lawsuit filed in 1988 against Hillcrest Cemeteries by a group of monument dealers. The courts eventually dismissed the issues brought up by the monument dealers and determined that the issues were without merit. Mr. Haswell asserted that cemeteries already abide by guidelines developed by the National Monument Dealers of America.

Senator Hafer indicated that there was another case where the monument dealers won. Ms. Bowman asked for more details concerning the merits of the case against Hillcrest Cemeteries. She would like to provide Meredyth Smith with some information regarding the case so that Ms. Smith can address it when she gives her presentation to the Task Force concerning anti-trust issues.

The Chairman asked Ms. Donaldson to come forward and discuss the changes in her proposal. He noted that there seemed to be some consensus at the last meeting on several points: 1) mediation and arbitration should be part of the system; 2) an advisory council should include cemetery owners (both nonprofit and for profit), memorialist, and consumers; 3) a sliding scale fee

should be in place for the benefit of religious and nonprofit cemeteries; and 4) audit procedures should not be required for every cemetery.

Mr. Markowski noted that he did not recall a specific vote on whether nonprofit and religious cemeteries should be included in the proposal. He recommended that religious cemeteries not be included in the proposal because of the separation of church and state and for historical reasons. He referred to the Attorney General's statements that less than 18% of the complaints were from religious and nonprofit cemeteries. Mr. Markowski suggested following Senator Madden's advice and excluding religious cemeteries unless serious problems arise down the road.

Ms. Bowman asked whether any religious cemeteries sold preneed. The answer was yes. She said that because of the preneed issue some sort of registration requirements should be in place for religious cemeteries. Whenever consumers are investing money, their interests should be protected.

Ms. Suskin asked what consumers do with a complaint against a religious cemetery. Mr. Markowski answered that complaints could be rectified through the parish or, as a legal recourse, court. Mr. Murphy maintained that regulation of cemeteries should be all or nothing. He suggested that Catholic cemeteries that have management groups handling their affairs can't be distinguished from nonprofit cemeteries. He sees this happening quite frequently in Baltimore.

Senator Trotter asked whether religious cemeteries are run better than for profit cemeteries. He asserted that if protecting consumers is our goal then we should recognize the religious oriented person as consumers as well. The Chairman agreed that this individual was still contracting for a product.

Mr. Canapp suggested that registration of cemeteries encompass everyone. He also suggested examining the amended Donaldson proposal line by line. The Chairman asked for further discussion.

Ms. Gilison argued that religious cemeteries should be exempt from the registration requirement, and, in the alternative, exempt from any fees that might be collected.

A vote was taken on a motion to exempt religious cemeteries from the requirement to register. The vote was as follows: Ms. Donaldson, Ms. Bowman, Ms. Suskin, Ms. Maddux, Mr. Lachance, Mr. Goodman, Delegate Harrison, Delegate Morhaim, Mr. Ranier, Senator Trotter, Mr. Canapp, Mr. Murphy, Dr. Smialek and Mr. Jenkins voting against the exemption, Ms. Gilison, Senator Madden, Mr. Markowski, Mr. Haswell and Mr. Brown voting for the exemption, and Senator Hafer abstaining.

Ms. Gilison moved that religious cemeteries be exempt from any fees. Ms. Bowman suggested that a fee, although perhaps a reduced fee for religious cemeteries, is necessary to cover the cost to handle a complaint. This is the same whether the cemetery is for-profit or religious. Ms. Suskin suggested a sliding fee for cemeteries based on the size. She proposed that if religious

cemeteries act like for-profit cemeteries they should pay some fee. Mr. Markowski said a fee for cemeteries will penalize religious cemeteries for being efficient. Mr. Brown said that, if we exempt everybody, we are back to placing a burden on for-profits which make up a small number of the cemetery population in the State. Delegate Morhaim remarked that his understanding of the proposal is that the Director of Cemetery Oversight would have considerable flexibility to make adjustments to a sliding fee scale to accommodate very small or nonprofit cemeteries.

Ms. Gilson moved that all religious cemeteries be exempt from fees. The vote was as follows: Ms. Donaldson, Ms. Bowman, Ms. Suskin, Ms. Maddux, Mr. Lachance, Mr. Goodman, Mr. Harrison, Delegate Morhaim, Mr. Ranier, Senator Hafer, Senator Trotter, Mr. Canapp, Mr. Murphy, Dr. Smialek, and Mr. Brown voted not to exempt religious cemeteries from fees, with Ms. Gilson, Senator Madden, Mr. Markowski, Mr. Haswell and Mr. Jenkins voting to exempt them.

Mr. Canapp requested examining Ms. Donaldson's proposal from the beginning, line by line. Before Ms. Donaldson began, Mr. Ranier told the Task Force that Ms. Donaldson had met with some ceterierians to get information needed for parts of her proposal. He indicated that both of the attorneys from the Department of Legislative Reference attended the meeting. Ms. Donaldson pointed out that the changed parts of her draft were in italics and the changes came from compiling information received from ceterierians and other Task Force members. Mr. Ranier asked that any member who had a comment about a particular point speak when that point was covered rather than waiting.

After discussing the definitions in the proposal, Delegate Morhaim asked if the members really wanted to go through the proposal line by line. Mr. Ranier asked the members to choose whether to proceed line by line or work on the general concepts. Senator Madden explained that the proposal would go to the Governor who might make additional changes. Ms. Suskin argued that the Task Force doesn't have adequate time to address each point, but should ensure that the major issues are addressed. Mr. Haswell said that he was worried about being too broad and asked the chairman what approach he had used when working on a task force previously. Mr. Ranier explained that with the earlier task force the group was trying to rebuild existing law, not create new law. Ms. Bowman wanted Ms. Donaldson to start with the broader concepts of her proposal and act upon those. This approach was taken.

The next issue covered was the makeup of the advisory council and the number of times they would meet. In Ms. Donaldson's proposal, the council is required to meet once a year but could meet more often, as necessary. Mr. Goodman recommended that the advisory council consist of 9 members: four ceterierians (one nonprofit, one for-profit, one religious, and 1 municipal); four consumer members, and one memorialist. Mr. Goodman's proposal required six meetings a year. Delegate Morhaim agreed with the makeup of the council Mr. Goodman proposed but said it would not be necessary to include language to meet more than once a year.

A motion was made to have a memorialist on the council. Mr. Haswell argued that a memorialist should not be on the advisory council because they don't know the cemetery business.

A motion was made to accept Mr. Goodman's proposal for the makeup of the council. A majority of the members agreed to include a memorialist on the council. The motion was passed on a voice vote.

Senator Madden recommended that the selection of members for the advisory council and director be subject to the advice and consent of the Senate. Mr. Haswell said this is sounding more and more like a board without the name. Senator Trotter said that a board is defined by what it does, not what it is called. Senator Madden withdrew the request.

Mr. Markowski asked who will be regulated. He thinks anybody who does business with a cemetery should be regulated -- the place where the goods are deposited should be regulated. Mr. Ranier asked what funeral directors sell that could be subject to the cemetery's jurisdiction. Mr. Markowski said they could sell urns, vaults, etc. Ms. Bowman wants all who sell cemetery goods to be under the jurisdiction of the Office of Cemetery Oversight. Delegate Morhaim recommended that discussion of the sale of goods be reserved for the Task Force meeting on preneed. Mr. Haswell wanted the issue of who would come under the jurisdiction of the Office of Cemetery Oversight settled. Senator Hafer said that a lot of funeral homes sell monuments and other cemetery goods. Ms. Bowman believes that consumers would be confused if they have to decide where to go with a complaint.

Mr. Ranier asked Mr. Murphy if, when the Board of Morticians receives a complaint about a monument sold by a funeral home, they have jurisdiction. Mr. Murphy replied that the Board would only have jurisdiction if the monument was a preneed item. Mr. Murphy explained that in his opinion there are too many gray areas in the present death-care industry. Depending on who is selling a casket as a preneed item, 10%, 55%, or 0% of the monies would have to be held in escrow.

Mr. Ranier then asked Ms. Bowman where she thought regulation of monument sales should be. She answered that it is now under the Consumer Protection Division but feels monument dealers should be regulated under the Office of Cemetery Oversight. Mr. Goodman feels the consumer will be the loser in a situation with all these loopholes and pointed out the advantage of the one umbrella group that Oregon is using. Delegate Morhaim said that a lot of issues will come up again in the discussion of preneed. He spoke of a bill he introduced in the legislature last year that required sales of all death care goods be handled the same way. Ms. Bowman agreed that there should be the same set of rules for all.

Mr. Haswell moved that the Office of Cemetery Oversight govern the registration of monument dealers. On a voice vote, all voted yes with the exception of Mr. Murphy who voted no.

Delegate Morhaim then asked Ms. Donaldson a series of questions as follows:

(1) Does the proposal contain a sliding scale of fees for charitable and nonprofit cemeteries?
No.

(2) Does the proposal provide for a reduction in the Director's status from full-time to part-time as needed? Yes.

(3) Does the proposal require a study to examine the feasibility of combining the Office of Cemetery Oversight and the Board of Morticians into one Board? No.

(4) Does the proposal require both mediation and arbitration? Yes.

(5) Does the proposal require that the Office of Cemetery Oversight work in cooperation with and make referrals to the State Board of Morticians? No.

(6) Does the proposal require that some form of financial audits still take place? Yes.

Mr. Murphy reported that the Board of Morticians meets 12 times a years. Ninety percent of the meetings are open to the public. He offered the Board's help to get the Office of Cemetery Oversight up and running.

Ms. Suskin expressed concern about Section 5-206 of the proposal which requires that the Director carry out his or her duties with the advice and consultation of cemetery representatives. She argued that it would be more appropriate to require consultation with the advisory council. She maintained that cemetarians are adequately represented on the council and believes that this would usurp the role of the council. Ms. Bowman moved that the language be changed to require that the Director consult with the advisory council and representatives of the cemetery industry when adopting rules, regulations, a code of ethics, and performance standards. The motion was unanimously approved.

Delegate Morhaim suggested that language be added to require the Office of Cemetery Oversight and the Board of Morticians to work together collaboratively and develop recommendations to join the Office of Cemetery Oversight and the Board of Morticians. He also suggested that a sliding fee schedule be considered for nonprofit and charitable cemeteries.

Ms. Donaldson indicated that the cemetarians suggested attaching a fee to the burial transit fee to fund the Office of Cemetery Oversight. There was some discussion as to whether the burial transit fee was a fee in existence now, whether it would be a new fee, or whether this was a fee to be attached to the death certificate. In actuality, Mr. Haswell envisioned creating a burial transit fee so that the consumer would know they were paying this for the Office of Cemetery Oversight. Mr. Brown objected to the concept of a burial transit fee because it would unduly burden small cemeteries that only handle a few deaths a year because of the collection and reporting process. Mr. Jenkins said that a burial transit fee could cause a problem for Prince Georges County as many of those buried come from the District of Columbia; thereby creating a collection problem. Mr. Murphy said he was vehemently opposed to this idea as the Board of Morticians was a specially funded Board and the Morticians are paying their own way. Mr. Jenkins added that funeral directors pay their fees without penalizing consumers and without a sliding scale. Mr. Haswell argued that

the costs are eventually passed on to the consumer. Mr. Markowski maintained that with a fee consumers would see how much protection really costs.

Senator Hafer said that the public not only wanted no new taxes but had come to recognize that fees were actually taxes.

Delegate Morhaim argued for a sliding scale that would give the Director reasonable leeway to set fees. He added that there is a distinction between a professional board and regulation of commerce. Delegate Morhaim moved that the Director be prohibited from involvement in the death business. This was approved on a voice vote.

Mr. Goodman commended Dulaney Valley Memorial Park for the excellence of its cemetery operation. He asked if there could be some kind of educational requirement for ceterierians. He also suggested that the Office of Cemetery Oversight educate the public on the death-care industry, advise them of their choices, and tell them where they can go with a complaint. Mr. Haswell said the education concept is good but expensive. He also added that it would be difficult for small cemeteries who have volunteers.

Mr. Markowski said there is a one-week course at Memphis State every year which is attended by some ceterierians. He added that larger cemeteries belong to the American Cemetery Association, but smaller cemeteries can't afford to send someone to Memphis. Mr. Goodman asked if the Freestate Cemetery Association had any educational programs now. Mr. Haswell answered that they do have some presentations at meetings.

Ms. Bowman said that education alone would not solve the problem. Ceterierians know what to do but some of them haven't been doing it. Ms. Bowman also noted that a number of questions were raised on Ms. Donaldson's draft and suggested sticking with the original language.

There was a brief discussion of the definition of "financially sound" and what it means. Ms. Donaldson said she would talk to the Chairman of Public Accountancy to get more information. Ms. Gilson was concerned about how you would determine "financially sound" for a religious cemetery.

Mr. Markowski expressed concern that the Director will be able to dictate the quality of services or goods. This could create conflicts, for example, if the Director said that people didn't have to have a liner but an individual cemetery required one. Also, he feared that the Director would dictate what type of service would have to be performed. Ms. Suskin asked if this wasn't why the Director consulted with the industry.

Mr. Murphy tried to reassure the fear of a dictatorial Director by explaining that the Board of Morticians does not go in and tell people how to run things. They only help the consumer if there is a problem. Ms. Donaldson said that any regulations the Director wants would have to pass the Administrative, Executive and Legislative Review Committee. This is a Committee made up of members of the Senate and House of Delegates.

Mr. Haswell expressed concern that the Director will set standards and have an unlimited czarship. He wants the language giving the Director authority to set performance standards removed. Ms. Donaldson said this is standard language for DLLR entities. Mr. Ranier does not see the need to change the language if it is standard.

Mr. Haswell would like to have a cap on fees. Mr. Ranier asked him what he feels the cap should be. Mr. Lachance said that the fees can be limited to the cost of doing business and no more. Ms. Donaldson also pointed out that the budget which is set by the legislature every year will limit the size of the Office.

Mr. Haswell thought that the whole idea of criminal background checks should be eliminated because it is excessive and expensive. After a short discussion, Mr. Haswell put it in the form of a motion and the Task Force voted to remove that provision.

The next discussion concerned price lists provided by cemeteries. Mr. Canapp suggested that a general price list of goods and services be disclosed to consumers. Mr. Haswell noted that the FTC conducted extensive hearings on this issue and decided not to include cemeteries in the price list requirements that affect funeral homes. Mr. Haswell stated that price lists would be difficult for any cemetery to provide because of the many choices cemeteries offer. Mr. Ranier asked if it wasn't possible that this complexity made it more desirous for the consumer to have some help by having a list.

Delegate Morhaim distinguished between a comprehensive price list and an estimate. He said people definitely ought to have an itemized list when they make a purchase to know exactly what they bought. He said that many of the complaints he receives about cemeteries are from people who have no idea what they paid for. Mr. Haswell said that the consumer already gets a list. Mr. Canapp said that it was his understanding that the FTC is still considering the price list issue. Senator Hafer said that there had been a great controversy as to who could testify and who could not testify before the FTC. Several members suggested that there could be a price list with ranges of prices given for different goods and services. Ms. Bowman stated that no one here has the intent of grinding cemeteries, but are here to help the consumer.

Mr. Canapp indicated that other states have adopted general price lists for cemeteries. Ms. Suskin maintained that if consumers are not provided some methodology for price comparison, then the Task Force is not fulfilling its mandate. Mr. Murphy noted that funeral directors are required to provide specific prices for services and price ranges for products. Ms. Bowman suggested that the cemeterians on the Task Force come up with a price list that is reasonable.

Mr. Ranier requested that Mr. Haswell give him a report on the information given by cemeteries to the consumer and asked to have any further discussion on the issue tabled until the next meeting. He also asked Legislative Reference to start drafting their report which will include

the recent agreements reached by the Task Force. He asked Ms. Donaldson to start revising her draft to reflect the discussions that were held and also scheduled the next meeting to be a public hearing on preneed.

The meeting was adjourned at 8:46 p.m.

TASK FORCE TO EXAMINE THE STATE'S CEMETERY AND FUNERAL INDUSTRY

PUBLIC HEARING ON PRENEED

October 15, 1996

Members Present

Edward Rainier, Chairman
Senator Hafer
David Goodman
Frank Porter
Michael Lachance
Sheila Stewart-Duncan
Harriet Suskind
Susan Elson
Rebecca Bowman
Margot Gilison

Frank Markowski
Frank Haswell
Earl Canapp
Thomas Murphy
Delegate Muse
Charles Brown
Joe Jenkins
Judith Donaldson
Lisa Maddox

The meeting was convened at 6:05 p.m. by the Chairman, Edward Rainier. The minutes from the previous meeting were approved. Mr. Haswell took exception to the omission of his request that the Wyatt and Wirthlin reports be distributed to the members of the Task Force. The Chairman read a letter from Delegate Mary Roe Walkup regarding the transportation of bodies for autopsies and asked that it be distributed. Mr. Haswell was asked to address a complaint regarding a July interment. The Chairman asked that the members review a draft of a price list submitted by Mr. Canapp that would be applicable for cemeteries.

The Chairman stated that the purpose of the hearing is to hear testimony on the issue of preneed. He asked the presenters to keep their statements to eight minutes but insisted that the Task Force would be flexible.

SYNOPSIS OF PRESENTATIONS

Donald Skaggs, representing himself

In September, Mr. Skaggs visited the Gardens of Faith Cemetery in order to make preneed arrangements on behalf of his wife. He purchased burial plots at Gardens of Faith about 40 years ago. He was told that he would be charged \$955 to open and close the grave, \$500 more for a vault than the price quoted by his funeral director, and \$1250 for a bronze memorial plaque. He would be charged a \$50 processing fee for each transaction. The cheapest casket sold by the cemetery was more expensive than any casket sold by the funeral home. Moreover, he was only able to view the caskets by catalogue. Mr. Skaggs believes that making prearrangements is essential. He felt like the cemetery was trying to rip him off. In addition, he believes that he is entitled to a \$100 refund.

C.J. Thacker, representing Thacker Caskets, Clinton, Maryland

Mr. Thacker described two negative experiences that he had with cemeteries in the past 18 months. At the death of his infant child, he went to Columbia Memorial in Howard County. He was told that he was required to use a particular type of infant container. Mr. Thacker believes that the cemetery tried to steer him toward one type of product over another. He ultimately had to buy an adult size grave and purchase an adult casket for his child's interment.

Mr. Thacker also went to Wakeview in Sykesville to gather information on preneed arrangements for his in-laws. He repeatedly asked for a price list and he was never given anything in writing. Mr. Thacker recommends that cemeteries be required to give price list and that there be a level playing field in the industry.

Devin Doolan, representing the Maryland Free State Cemetery Association

Mr. Doolan asserted that preneed selling is in the public interest. He stated that cemeteries should not be required to escrow high percentages of preneed monies because the smaller cemeteries need the money to maintain overhead. He noted that Maryland cemeteries used to be required to escrow 67% of preneed funds. Then, the General Assembly determined that, in order to protect consumers, cemeteries should only be required to trust 55%. Mr. Doolan believes that cemeteries should only have to escrow 50% of the wholesale price of the goods and services that consumers are purchasing on a preneed basis. He added that higher trusting amounts would diminish the amount of preneed sales.

Mr. Doolan suggested performance bonds as an alternative to costly and burdensome trusting requirements. The Chairman asked that he furnish additional information on this concept. Mr. Doolan indicated that he did not know his client's position on whether consumers should be entitled to refunds.

Dave Mason, representing Lawyers Insurance Agency, Inc.

Mr. Mason believes that a surety bond would best fit the description of the performance bond that Mr. Doolan referred to in his presentation; however, Mr. Mason believes that smaller cemeteries would have trouble qualifying for this type of bond. A cemetery's assets would have to equal the face value of the bond. The bond would be in an amount that best estimates the yearly preneed sales.

Jack Maynard, representing Hillcrest Cemeteries, past President of the Maryland Free State Cemetery Association

Mr. Maynard recommends the use of performance bonds in lieu of the escrow requirements.

Erich March, owner of March Funeral Homes and King Park Cemetery

Mr. March recommends that cemeteries be required to provide a price list. However, he does not believe that consumers should receive full refunds from cemeteries. He explained that cemeteries use preneed monies to maintain their overhead and for the upkeep of the cemetery. If consumers were entitled to a refund, he does not know where he would get the money from for the refund. He clarified that the perpetual care fund is money set aside for the upkeep of the cemetery after it is full. Mr. March said that the cemetery is only entitled to use the interest from the perpetual care fund for current, day-to-day maintenance.

Mr. March also recommends that casket sales be limited to funeral homes only. In the alternative, he suggested that anyone who sells a casket on a preneed basis be required to escrow 100% of the funds. Under current law, only funeral homes must escrow 100% of the preneed funds from the sale of a casket.

Mr. March believes that, in order to protect consumers, the Task Force must also protect the businesses that provide services to consumers. He stated that 100% trusting for funeral homes is fine to the extent the services provided incur no additional overhead. Mr. March is "wishy washy" on the issue of allowing cemeteries to impose interests on installment contracts. He does not believe it is proper to charge interests on a product that has not been delivered. Mr. March also indicated that he supports the proposed Office of Cemetery Oversight with a Director.

Mr. March also answered a question to clarify the difference between preneed insurance (which is not legal in Maryland) and an insurance policy prefunded for funeral expenses. Mr. Murphy, a member of the Task Force, recommended that the insurance issue be fully examined by this Task Force.

Jim Doyle, representing the Maryland State Funeral Directors Association

Mr. Doyle stated that the Task Force should remain focused on the interests of the consumer. He suggested that cemeteries be required to escrow 100% of the funds from preneed sales, even if this required an alteration in the manner that cemeteries currently do business. He asserted that consumers should be entitled to a full refund, including principal and interests. Mr. Doyle maintains that preneed law should apply equally to all entities that sell preneed.

Mr. Doyle suggested that, in light of the previous testimony regarding misrepresentations by cemeteries, consumers should have the right to cancel a preneed contract. He does not believe that this will have an anti-competitive effect on the industry. He argues that, if the Task Force requires full disclosure, a general price list, and refundability, this will lead to lower prices and benefit consumers. Mr. Doyle does not want to run cemeteries out of business, but suggested that they need to change the way that they do business. He believes that the Task Force should be focused on consumers.

Michael J. Ruck, representing the Maryland State Funeral Directors Association

Mr. Ruck believes that anyone selling preneed goods and services should be governed by uniform provisions that apply to everyone. The Funeral Association's position on preneed sales for anyone selling preneed goods is as follows:

1. 100% of the funds for all preneed sales should be placed in trust in a federally insured investment.
2. The buyer should be sent 1099s annually reporting the interest generated by the investment.
3. The buyer should be entitled to 100% refund-ability of principle and interest.

Jennifer Bean-Dempsey, representing herself

Ms. Bean-Dempsey expressed gratitude to the Task Force for their hard work and diligent effort. She believes that perpetual care is an important aspect to the preneed issue.

Ann Bentley, representing the Prince George's County Office of Business and Regulatory Affairs

Ms. Bentley urged the Task Force to review the model preneed law developed by the American Association of Retired Persons (AARP). She recommends the following:

1. Mausoleums that are under construction should be included in the definition of preneed goods.
2. Require registration for all sellers of preneed goods and services.
3. Prohibit from registering to sell preneed goods the insolvent or persons with a criminal history of betraying fiduciary duties .
4. Require criminal background checks for applicants for registration to sell preneed goods and services.
5. Make companies that own cemeteries liable for the actions of their employees and agents in the sale of preneed goods and services.
6. Require that cemeteries charge the same prices for goods and services sold preneed as those prices for at need.
7. Require that cemeteries sell inexpensive, concrete grave liners for preneed.

8. Require that preneed contracts include a detailed itemization and description of all good and services to be provided.
9. Consumers should be entitled to a right of cancellation with full refund of monies prior to delivery of goods and services or cancellation rights with refund of all monies except a preset percentage to offset the seller's cost.
10. Trusting of funds paid by consumers for memorial care and installation.
11. If monies are commingled in a single trust account, separate records should be kept for each consumer.

TASK FORCE TO EXAMINE THE STATE'S CEMETERY AND FUNERAL INDUSTRY

MINUTES

October 28, 1996

6:00 p.m.

Members Present

Edward Ranier, Chairman
Senator Hafer
Delegate Morhaim
Charles Brown
Thomas Murphy
John Smialek
Earl Canapp
Frank Haswell
Frank Markowski
Margot Gilison
Judy Donaldson
Susan Elson

David Goodman
Michael Lachance
Frank Porter
Lisa Maddux
Harriet Suskin
Rebecca Bowman
Joe Jenkins
Sheila Stewart-Duncan

Chairman Edward Ranier called the meeting to order at 6:02 p.m. The Chairman asked if there were any corrections to the minutes of the last meeting. Ms. Gilison said that she was incorrectly omitted from the list of members in attendance at the last meeting. The minutes were approved with Ms. Gilison's correction.

Mr. Ranier stated that his plan for the meeting was to present questions that he developed based on issues that were raised during the public hearing. He indicated that the issues would be discussed at this meeting and voted on at the next meeting. Mr. Ranier asked members to study the issues and if necessary, request additional information so that an informed vote could take place.

Mr. Ranier then requested staff to mail the members a copy of a letter provided by Mr. Doolan regarding credit exchange. He also pointed out that Dave Mason had written a letter to the Task Force concerning preneed bonds and wanted to make sure that all of the Task Force members had a copy. Mr. Mason's letter is in response to a question posed at the last meeting regarding whether preneed funds would be protected indefinitely even if the purchaser did not continue to renew the bond. Mr. Mason said that the monies originally protected by the bond would continue to be protected until all preneed funds had been utilized. Mr. Ranier asked Mr. Mason if the cost of a bond would be based on the age of the consumers who purchased the preneed contract. Mr. Mason felt that underwriters would inquire as to the age of customers and that the lower the age of the applicant the higher the annual price of the bond.

Mr. Haswell said that, in his experience in other states, age has never been a consideration for this type of bond. Mr. Mason countered that in Maryland it is a consideration.

Mr. Mason was then asked if he thought bonding for preneed funds was a good idea. Mr. Mason replied that he did not think bonding was a good idea nor did he like a letter of credit because the protection of preneed funds is then in the hands of private enterprise rather than government.

Mr. Haswell then requested that someone from a bonding company testify before the Task Force. Mr. Ranier asked Mr. Mason to supply a name. Mr. Mason asked Mr. Haswell if he wanted to be bonded? Mr. Haswell responded that he felt bonding was one alternative that needed to be presented.

Mr. Ranier then read parts of two letters (Appendix A) that he had received concerning personal experiences with cemeteries, one a positive experience and one a negative one. Both letters concerned preneed purchases.

The first speaker of the evening was Mr. Lee Norrgard who is manager of the consumer affairs section of the American Association of Retired Persons (AARP). He began by stating that preneed is big business in this country and noted that there are well over \$20 billion tied up in preneed trust accounts or in preneed insurance.

Mr. Norrgard noted that AARP has developed model legislation to serve as a starting point for a discussion on regulating the preneed industry. Mr. Norrgard highlighted several issues that the AARP strongly recommends should be included in legislation dealing with preneed.

1. Preneed legislation should provide a meaningful definition of what is preneed, including what goods and services are covered.
2. Uniform requirements should be established for both the cemetery and the funeral industries since they are increasingly tied together and consumers view them as one industry.
3. Trusting requirements should be established. AARP has changed their position regarding trusting requirements over the years. They now favor an approach, based on the actuarial business that would allow trusting amounts to be determined based on the age of the buyer.
4. The legislation should require regular audits. This recommendation is based on the fact that many fraudulent activities concerning these funds are currently being investigated.
5. The legislation should provide for an oversight agency.

6. Consumers should be guaranteed restitution if there is fraud or a problem.
7. There should be full contract disclosure explaining how the goods are to be delivered and specifying the consumer's right to cancel in 30 days, as well as after a longer period of time (Mr. Norrgard noted that the number of people canceling because they move is very small).
8. There should be periodic reporting requirements.

Mr. Ranier questioned Mr. Norrgard about the idea of determining trusting amounts based on the age of the person making the contract. Mr. Norrgard answered that he is not an actuary, but estimated that 100% should be trusted for an 80 year old and around 50% for a 55 year old.

Mr. Ranier then asked Mr. Norrgard if contract disclosure should apply to the cemetery side like it does to the funeral industry. Mr. Norrgard replied in the affirmative.

Mr. Ranier continued by asking whether Mr. Norrgard felt consumers would go shopping with a price list. Mr. Norrgard said that only a small percentage of consumers do now, but feels that will increase in the future. He sees companies getting more competitive for several reasons, including the increase in cremations, which occur in 20% of deaths nationwide but have risen to 40% on the west coast.

Mr. Ranier then asked if Mr. Norrgard felt that trusting requirements should also apply to memorialists. Mr. Norrgard answered yes that trusting requirements should apply to anyone selling preneed.

With respect to the idea of trusting amounts being determined by the age of the buyer, Ms. Bowman asked Mr. Norrgard how the seller would know how much to trust. Mr. Norrgard answered that the amount would be determined by a chart devised by the actuaries.

In response to Delegate Morhaim's concern that more money would have to be trusted as people got older, Mr. Norrgard said that it would be similar to a pension fund. Money trusted should earn enough to cover the increased amount needed as people get older. Mr. Norrgard indicated that he would be happy to submit a report.

Mr. Ranier asked who should get the interest in case of a refund. Since buying a preneed contract is a unique purchase, Mr. Norrgard feels that the consumer should get some of the interest as well as the principal upon cancellation. However, the consumer should pay a penalty.

Mr. Jenkins asked Mr. Norrgard where AARP got their information on this subject. Mr. Norrgard said that AARP performs independent research. They have consulted with state and federal regulators and sought comments from funeral directors and cemetery owners. AARP encourages pre-planning but cautions those pre-paying.

Ms. Gilson asked if AARP felt there was any federal legislation covering preneed coming anytime soon. Mr. Norrgard referred to the FTC hearings of 1988-1989 concerning whether cemeteries should have disclosure requirements. The FTC decided not to require them at that time. Mr. Norrgard believes that any legislation over the next few years will occur on a state-by-state basis rather than a federal one.

Ms. Bowman asked if the AARP had any recommendations concerning actual delivery versus constructive delivery. Mr. Norrgard suggested that a warranty should ensure that the product is in good condition at the time of need.

Mr. Ranier then called Mr. Ruck to testify as to whether 100% trusting discourages the sale of preneed on the funeral side. Mr. Ruck owns and operates a funeral business in Maryland. Mr. Ruck was asked to give examples of what percentage of his sales are preneed in comparison to at-need. In addition to information from his funeral home, Mr. Ruck contacted approximately 15 firms in the State to determine their preneed activity.

In Mr. Ruck's business, he conducted 1,834 funerals in 1994 at his three locations. He made 666 pre-arrangements. Of the 666, 527 were prepaid and the others were only pre-arranged. Senator Hafer asked him how many of his at-need funerals were prepaid. Mr. Ruck answered approximately 24% were prepaid. He then gave figures on preneed contracts sold by the other funeral homes that he had contacted (Appendix B). Mr. Ruck's conclusion from his survey was that the 100% trusting requirements do not discourage preneed sales. He noted that prearranged does not necessarily mean prepaid, but the procedures and disclosure requirements still apply.

Mr. Ranier asked whether the Ruck Funeral Homes had a licensed person selling funeral insurance. Mr. Ruck stated that funeral insurance is not sold by his funeral homes because of the prohibition against tie-in contracts under Maryland law. Mr. Ranier then asked Mr. Ruck, what advantage from a business perspective, is there for his company to sell on a preneed basis. Mr. Ruck stated that selling preneed has the following advantages:

1. It guarantees business;
2. Preneed sales give the funeral home personnel time to sit down with the families and give them a level of comfort under less stressful circumstances; and
3. From a strictly financial standpoint, preneed sales guarantee that the funeral home will be paid and they do not have to send out monthly statements.

Mr. Ruck was asked about preneed marketing activity. He responded by providing several examples of how his funeral home markets their services. In addition, Mr. Ruck provided the Task Force with sample advertisements that he uses including calendars for churches with a card that could be returned to the funeral home if the consumer wanted to be contacted, and other ads and

brochures. Funeral homes are prohibited by law from engaging in the same kind of telemarketing activity that cemeteries practice.

Mr. Brown asked Mr. Ruck if their business was set up to accept small monthly payments for preneed items. Mr. Ruck said yes, but added that only a small percentage of people pay in this way. Mr. Ruck feels that many prepay the entire amount because of the Medicaid exclusion (money in a preneed trust account is not counted as an asset in determining Medicaid eligibility).

Mr. Ruck then proceeded to explain that a prepaid contract in Maryland can be structured as revocable or irrevocable for purposes of Medicaid. On revocation all the money has to be paid back, but if the contract is irrevocable, the money could never be used for any other type of purchase. On an irrevocable contract, if the funeral home goes out of business, the consumer can substitute another funeral home.

Delegate Morhaim returned to the Medicaid issue and questioned whether there is a limit to how much one can place in trust. Mr. Ruck responded that there was no limit, but, in his experience, he does not see unusually large amounts. Mr. Ruck said that there have been examples where dishonest funeral home operators had taken a larger sum of money than was necessary for the funeral and then returned the difference to the consumer. This constitutes Medicaid fraud. Delegate Morhaim said that it could be argued that the Medicaid exclusion is a back-door way of financing funerals. Mr. Ruck said that his experience showed that the people using this exclusion have usually lost their spouse, are exhausting their resources and want to maintain a certain amount of dignity by having money available for their funerals. Senator Hafer asked if someone could go beyond today's price list when arranging a preneed funeral. Mr. Ruck answered that they could not.

Ms. Suskin noted that people can also put money in a burial trust held by a bank. This is not considered an asset for Medicaid purposes and there is no cap. However, the money cannot be withdrawn unless funds are used for a funeral. This is also known as a "pay on death account". Ms. Suskin informed the Task Force that surplus money from these accounts reverts to the Education Fund because it cannot go to the person, the funeral home, or the cemetery.

Mr. Markowski asked whether the person selling preneed insurance receives a commission. Mr. Ruck again said that his family does not sell insurance, but if someone did, they would get a commission. Mr. Markowski asked if a person buys insurance and then cancels a year later, would they get all their money back. The answer was no, but that would be no different than any other insurance policy. Senator Hafer said there are some states where you can fund preneed contracts through insurance policies and these are similar to the debit policies that used to be sold.

Mr. Ruck stated that most of their preneed sales are to people in their 60's or 70's. For people in this age group, purchasing an insurance policy to finance a preneed contract would be very expensive. Senator Hafer added that most of these policies are sold with a one-time payment. Mr. Murphy said that there are insurers who sell preneed funeral policies.

Mr. Ranier asked Mr. Murphy, in his capacity as a funeral home owner that is part of a large corporation, to discuss what percentage of his sales are preneed. Mr. Murphy responded that he could not give an exact figure on their percentage of preneed sales, but added that they were very aggressive on preneed marketing and their figures would probably be higher than those given in the examples by Mr. Ruck. Mr. Capitano answered that the numbers were around 45%. Mr. Murphy's company does not sell preneed insurance.

Mr. Ranier then asked the group to look carefully over the list of questions (Appendix C) that he drafted, in order for an informed vote to be taken at the next meeting. He asked if there were any issues that anyone had a comment on.

Mr. Markowski commented on the first issue under miscellaneous considerations by saying that if a cemetery performs a service connected with third-party merchandise, they should be allowed to charge for that service. The Task Force then proceeded to discuss the types of services connected with third-party merchandise. The first service mentioned was the installation of a vault. Mr. Markowski said that even if the third-party vault provider was willing to install the vault, due to time constraints involved with conducting an interment, the cemetery might not always be able to work with the third-party provider. Mr. Canapp made the point that he does not believe a cemetery should be allowed to charge for supervising an installation and also feels that cemeteries should be required to disclose the price for goods and services.

Under Issue # 2, Mr. Markowski wants cemeteries to be able to substitute the same quality merchandise from another vendor if needed. He notes that this need could arise if a company goes out of business and the merchandise contracted for is no longer available. Ms. Bowman brought up her concern about vaults being stored for long periods of time and whether the oldest vaults were being used first out of storage.

Ms. Bowman proceeded to discuss her concerns regarding Issue #5 under General Price List Issues. Ms. Bowman expressed the opinion that charging a higher price for preneed than at-need might constitute a finance charge. Several of the members explained that preneed was charged more because of the possibility of higher costs when the preneed contract was fulfilled (i.e., being buried on a weekend when labor costs were higher). Mr. Ranier asked Ms. Bowman to look into whether this would constitute a finance charge.

Ms. Suskin felt it was a strange concept to charge more for preneed than at-need. Mr. Brown said that they used to charge lower amounts but it didn't work out. Mr. Markowski agreed and stated that there are so many unknowns when you are selling preneed. Ms. Bowman thinks that if there is more cost in selling preneed, the extra amount should be considered a cost of doing business and charged to at-need customers as well as the preneed ones.

Mr. Canapp wanted to go on record as being in favor of the third and fourth proposals under the General Price List Issues.

Under the refund-ability issue, Ms. Bowman feels that a cooling-off period should be provided for the benefit of consumers. This would give consumers who make preneed purchases time to reconsider their decision and get a refund if they change their mind. She would have the refund work on a graduated basis where the customer would get increasingly less back as more time passed in order to compensate the cemetery for costs they might incur. Mr. Haswell said that the cemetery has to pay taxes on the full amount of a purchase during the year the contract is made, even if it is paid on an installment basis. He wonders how the refund would work to allow for this. Ms. Bowman agreed that there would have to be adjustments.

Under the preneed trust issues, Ms. Bowman said she feels that uniformity is extremely important. All entities selling preneed contracts should be bound by the same trusting requirements. She emphasized that she is not committed to 100% trusting and is bothered by the difference between the 100% required for funeral homes and the 55% used by cemeteries. The issue was raised that with the large corporations owning both cemeteries and funeral homes, they have the option to sell products out of the entity that can use the lowest trusting requirements.

Under #4 of Miscellaneous Considerations, Mr. Canapp stated that a person who makes a pre-construction purchase should be able to recoup all of his monies if the construction has not been completed upon need. Mr. Markowski said that often a person will agree to have the burial at another location in the cemetery until the construction of a mausoleum is completed. Mr. Canapp said that the family should have the option to go to another cemetery if this construction has not been completed. Mr. Haswell said that a family is getting a discount when they buy on a pre-construction basis. Pre-construction selling is also an important way for a cemetery to finance mausoleums.

Ms. Bowman expressed her nervousness with delivering preneed items before they are needed. She spoke of Dulaney Valley where there are 2,000 outstanding contracts for vaults. Here the oldest vaults in storage are used first. One problem with this, identified by Ms. Bowman, is that the consumer never has clear ownership rights to any particular vault. If the owner goes bankrupt or skips town, the consumer has no claim to a specific vault, and therefore, a secured creditor would be able to claim them as an asset, leaving the consumer without his or her merchandise. Accordingly, Ms. Bowman has a problem with merchandise being delivered when people are not ready for it and thinks it would be better for the money for those goods to be held in a trust account. Ms. Bowman wants the Task Force to look at whether interest can be charged on preneed accounts. She thinks a preneed sale is analogous to purchasing merchandise by lay-a-way. For lay-a-way, sales interest cannot be charged, although a nominal service charge is allowed.

A discussion of vaults ensued concerning whether the purchase of a vault includes the installation of the vault. Mr. Markowski stated that contracts should explicitly say whether or not installation is included. Senator Hafer brought up the subject of lawn crypts where an installation has already been made. Mr. Haswell added that lawn crypts are a good buy for the consumer and a good use of land. Mr. Ranier told of a case where the lawn crypt was not usable when needed because of moisture and asked what the cemeterians would do in an instance like this. Ms. Suskin said she felt the cemetery should be responsible because they did not drain the property properly.

Mr. Markowski said he thinks most cemeteries would replace the crypt. Mr. Brown said a more common occurrence is broken vases that cemeteries regularly replace without the families knowledge.

Mr. Eric March then spoke. In his first statement he said that he is bothered by the idea that if something is economically good for a cemetery it must be bad for the consumer. If cemeteries can not make money, they will not be in business. With a funeral, if a family does not have the money to pay all at once, they are not guaranteed the goods and services. If they are paying over time, they pay more. According to Mr. March, Maryland law says that if the money paid over time exceeds the cost of services, the funeral homes can keep the extra. Preneed serves a different need in a funeral home than a cemetery. With a funeral home, preneed assures business whereas with a cemetery it pays the costs of overhead. In response to whether or not cemeteries should have trusting requirements, Mr. March said that funeral homes through their lobbyists chose to have 100% trusting; on the cemetery side he feels it would not make economic sense. Mr. March expressed the strong opinion that cemeteries should not sell caskets and that to continue to do so is going to put funeral homes out of business.

Mr. Murphy said that, until an Attorney General's opinion from December of last year, caskets were looked at as being almost like a controlled substance. However, after the Opinion anybody could sell them. Ms. Bowman interjected that the Attorney General's office did not make the law, they only interpreted the law. If the group feels there should be a change, it is up to them to try to get the Legislature to change the law.

Mr. March then told the Task Force that it has the power to influence the Legislature, but cautioned them to have a full comprehension of how they can affect business. Mr. Ranier asked Mr. March to supply the Task Force with any additional information he feels would be helpful. Mr. Ranier also reiterated that the work of the Task Force will result in a recommendation to the Governor and the Legislature. Mr. Brown asked the members to try to find where their great-grandfathers were buried and visit that cemetery.

The Task Force next heard from Sara Rex, the President of the Maryland Freestate Cemetery and Funeral Association. She said that funeral homes are more labor-intensive than cemeteries, but cemeteries need more capital. Cemeteries and funeral homes are vastly different from each other but it would serve no purpose to put either out of business. 100% trusting is not necessarily the best way to go. Her feeling is that, if such trusting is enacted, the large corporations would find a way to continue in operation, but the small companies would not survive. Mr. Goodman asked Ms. Rex how she felt about Mr. Norrgard's proposal. She responded that the Maryland Freestate Cemetery and Funeral Association is open to all proposals, including the trusting requirements addressed by Mr. Norrgard. However, this actuarial based amount tied to age is a new concept to them.

Ms. Bowman asked Ms. Rex how she felt about uniformity of trusting requirements. Ms. Rex replied that uniformity has to take into account the differences between cemeteries and funeral homes. The Chairman asked how her association felt about refund-ability and Ms. Rex indicated that the Board would be meeting on Wednesday to consider this issue. With respect to the

delivery of vaults, Ms. Rex said that the state legislature caused many cemeteries to store merchandise so that they could charge interest. The law is unusual in this area and she believes that trusting is best for consumers.

The Task Force then heard from Mr. Robert Silkworth, a memorialist. He first said that an outside memorialist should have the right to install a vault without an additional installation fee being charged by the cemetery. He suggested that Mr. March was part of the problem because the fee for installation at King Memorial Park increased from \$25 to \$200 for a stake off fee and an administrative fee. The Chairman asked about preneed for memorialists and Mr. Silkworth indicated that preneed memorial sales are rare. Sometimes customers pay over an extended period of time, but without interest being charged. Mr. Haswell asked if they check markers after installation and Mr. Silkworth said only if the family requests it. Mr. Brown suggested that freezing ground and chipmunks often cause markers to shift. Mr. Silkworth maintained that freezing ground has no impact on the installation of markers.

Marie Garfinkel of Lincoln Memorial Cemetery testified that the reason preneed opening and closing fees are more expensive is because they will cost more at a future time than they cost now. If the burial is done before the price goes up, the customer would be reimbursed the additional money that had been charged.

Mr. Ranier adjourned the meeting at 9:10.

TASK FORCE TO EXAMINE THE STATE'S CEMETERY AND FUNERAL INDUSTRY

MINUTES

November 4, 1996

Members Present

Edward Ranier, Chairman
Delegate Muse
Delegate Morhaim
Judy Donaldson
Rebecca Bowman
Harriet Suskin
Lisa Maddux
Michael Lachance
Margot Gilison
Susan Elson

Frank Porter
David Goodman
Frank Markowski
Earl Canapp
Thomas Murphy
John Smialek
Charles Brown
Joe Jenkins
Sheila Stewart-Duncan
Harriet Suskin

The Chairman, Mr. Edward Ranier, convened the meeting at 6:08 p.m. The Chairman asked that the minutes of the October 28, 1996 meeting be corrected to reflect that Mr. Capitano gave 45% as the percentage for preneed sales at Mr. Murphy's funeral home. With this correction, the minutes were approved.

Mr. Ranier then reviewed several documents which had been brought to his attention. They included the following:

(1) Letter submitted by Mr. Doolan concerning the Credit Exchange Program offered by the American Cemetery Association;

(2) Letter from Mr. Albert Bartles concerning a case brought by the Bradfording Cemetery Preservation Society, Inc. Ms. Bowman had talked to Mr. Bartles and found that the upcoming hearing is on a motion the cemetery has made to dismiss the case. Mr. Bartles' attorney has agreed to report back to Ms. Bowman who will convey the information to the Task Force.

(3) Two letters from Mr. Steven Stroud, a Maryland funeral director, the first concerning funeral homes or cemeteries selling insurance to finance preneed purchases and the second concerning preneed trusting.

(4) A letter from Mr. Alvin Seubott regarding perpetual care which Mr. Ranier asked Ms. Mitchell to copy and distribute to the members;

(5) A letter from Ms. Garfinkel explaining the reasons preneed is more expensive than at-need;

(6) Material from Ms. Jacoby (Mr. Ranier asked Ms. Mitchell to seek clarification from Ms. Jacoby on this material);

(7) Comments submitted by Erich March;

(8) A letter from the State Ethics Commission indicating that the members of the Task Force are exempt from disclosure requirements; and

(9) Mr. Goodman distributed actuarial information from Mr. Norrgard of the AARP.

Ms. Sarah Rex of the Maryland Freestate Funeral and Cemetery Association asked to address the Task Force before a vote was taken on the preneed issues. The Association has agreed to support partial refundability on undelivered preneed goods and services, specifically the principal and interest minus reasonable expenses. Ms. Rex clarified that reasonable expenses for funeral homes are different than the reasonable expenses for cemeteries. She stated that overhead is a nebulous concept. Ms. Rex indicated that the Legislature had reduced the escrow amount from 67% to 55% as an acknowledgment that cemeteries have more upfront costs than funeral homes. She further reminded the Task Force that the IRS requires cemeteries to pay the full amount of taxes on the profit from the contract during the year that the contract is made. The cemetery can recoup this payment in the future years if the contract is canceled, but she viewed this as another administrative headache. Ms. Rex suggested that 45% might be a starting point for the deduction of reasonable expenses, but didn't think a specific amount should be part of the Task Force's recommendations.

The Chairman asked for clarification on which items Ms. Rex believed should be refundable. She specified vaults, memorials, and caskets if they had not been delivered, as well as installation fees and opening and closing fees where those services had not been performed. She suggested that constructive delivery not be eliminated, but noted that, if it is eliminated, it will affect the percentage of refundability. Ms. Rex suggested that the purpose of a trust is to assure delivery at the time of need. The issue of a level playing field is extraneous. She argued that 55% of retail is more than adequate and that, in Florida, 110% of wholesale items and 70% of services is working well.

Delegate Morhaim asked Ms. Rex if she supports full refundability on products and services not delivered. Ms. Rex answered that she supports full refundability minus reasonable expenses. Mr. Goodman asked her opinion of tying age to the amount required for escrow. Ms. Rex said this would be an administrative nightmare and she felt the result eventually would lower the amounts required to be trusted on the cemetery side.

Mr. Canapp asked Ms. Rex to tell him what would be trusted if he made a \$3,000 preneed purchase. Ms. Rex answered that current law does not require trusting of the first 45% paid, but requires trusting of the second 55%. Delegate Morhaim asked what Ms. Rex would do now if

somebody wanted a refund. Ms. Rex said that the majority of the members of the Freestate Cemetery and Funeral Association try talking to the person or interesting them in the Credit Exchange Program, but would give a refund if those approaches did not work.

In response to a question from Mr. Ranier, Ms. Rex said that her association would oppose refundability on burial spaces. If, however, a family has a legitimate reason for canceling, they will usually provide a refund; but she noted that they have lost money by taking the space off the market. Mr. Ranier asked if you could say that the land had already been delivered and Ms. Rex replied that you could probably make a case for that point.

Mr. Ranier asked Mr. March to comment on refundability. Mr. March felt reasonable costs should be deducted.

Mr. Canapp requested that Mr. Doyle present an alternative proposal from the Maryland State Funeral Director's Association (MSFDA). The MSFDA supports 100% trusting for both the funeral and cemetery side. However, after hearing the testimony, the MSFDA recognizes that there is a wide gap in opinion on this issue. The MSFDA suggested an alternative proposal that offers competition, while eliminating some of the obstacles. Their proposal does not apply to the sale of plots, but applies to the sale of other goods and services. Responding to testimony from Mr. March that 20% of a preneed sale is paid in commissions, the MSFDA suggested that 80% of the preneed amount be trusted.

The proposal requires full disclosure of refundability which would include the full principle plus the interest earned on the 80% trusted. According to Mr. Norrgard of the AARP, 3% of the people nationwide who buy preneed cancel, while Mr. Ruck had testified that in Maryland a smaller percentage cancel. The position of the MSFDA is that this refundability should not present a problem to any group if they are competitive on price and value. Also, the proposal suggested that constructive delivery be eliminated. If there has been "true delivery", the preneed rules will not apply. Supporting their contention that constructive delivery should be abolished, Mr. Doyle attached an article from Michigan indicating that goods intended to be delivered "constructively" are often not available at need.

Mr. Ranier asked Mr. Doyle if the MSFDA would object to a deduction for reasonable costs in the event of a cancellation. Mr. Doyle said that these costs should be relatively insignificant. He does not believe the administrative costs of handling a preneed purchase would require vast sums of money.

Mr. Ranier asked Mr. Doyle if he thought "constructive delivery" should be left up to the consumer. Mr. Doyle is opposed to constructive delivery because the consumer does not want the goods delivered prior to need. Ms. Bowman asked Mr. Doyle's position on charging interest on preneed sales. The MSFDA is against this. Delegate Morhaim asked if there should be any charges or additional fees allowed because merchandise was purchased elsewhere and Mr. Doyle replied no. Mr. Murphy asked if insurance could be sold to finance preneed sales and was told that the MSFDA had taken no stand on this issue. Ms. Elson asked if the terms of refundability should be disclosed

in the contract whether full or not. Mr. Doyle said yes, the consumer should know the terms of refundability if he wants to cancel.

Mr. Ranier asked Ms. Rex to respond to Mr. Doyle's proposal. She objected to the requirement of 80% trusting on the cemetery side. She referred to insurance sales as an example of a preneed purchase where the consumer is not entitled to a refund. She agreed that price and value are important in staying competitive and that disclosure is important to help customers make comparisons. Ms. Rex said that this is the first time she has heard the term "constructive delivery" as opposed to "true delivery". Ms. Bowman believed that Ms. Rex had said that the buyer should have a choice between constructive delivery or escrow, but Ms. Rex said her position was that the seller, not the buyer, should have that option.

The Chairman suggested that the Task Force members make motions, discuss the motions, and vote on each of the issues presented at the last meeting. Mr. Ranier began by moving that all sellers of pre-need goods and services provide consumers with a general price list of the goods and services offered. (Motion #1) Mr. Canapp suggested that this include caskets and outer burial prices. He stated that these prices should be specific rather than just a range. Mr. Brown said that on the cemetery side, the plots sold today may not be used for twenty years. In twenty years, the price for opening and closing a grave might be totally different. Ms. Bowman pointed out that the only thing consumers have to go on is what things cost today. The first motion passed unanimously.

A motion was made to give the consumer a general price list that includes burial services, such as ground opening and closings, extra depth interment, inurement of cremated remains and mausoleum entombment. The list must be specific and include a statement that prices are effective as of the date of purchase and can change at anytime. (Motion #2) Mr. Markowski asked if this would be an inclusive list and pointed out that he has a book with 19 pages of prices. He would like to make sure that everything intended to be listed is included. Mr. Canapp argued that you cannot list everything, but thinks the group can cover most of them. Mr. Markowski indicated that this is a touchy area because the type of inscription and the date it is inscribed can make a difference in the price of a memorial. Motion number 2 passed unanimously.

A motion was made to require that a price list for plots, mausoleums, memorialization and urns be stated in terms of a general price range. (Motion #3) Mr. Canapp suggested that this motion at least gives the consumer enough knowledge to know what they have to work with. Motion number 3 passed unanimously.

Mr. Ranier made the fourth motion which required that preneed and at-need prices be stated separately if they differ. (Motion #4) Ms. Bowman expressed her opinion that there should not be a higher price for preneed sales. Mr. Ranier said that should be another motion. Mr. Goodman asked if the prices would be next to each other so consumers be aware of the difference. Mr. Ranier accepted as an amendment to his motion that the preneed and at-need prices be listed side-by-side. Ms. Bowman again stated that she felt the interest earned on the money trusted should make up for higher prices in the future due to inflation. Mr. Jenkins asked what would happen if the cemetery wanted to offer a lower price for preneed. Motion number 4 passed unanimously.

Ms. Bowman moved that preneed prices be no higher than at-need prices. (Motion #5) Mr. Brown testified that he did not think price should be dictated to a cemetery owner. He asked if this would preclude him from giving a discount on cemetery goods to a family without resources. Mr. Canapp said the FTC allows you to charge less.

Mr. Markowski noted two problems with the limit on higher prices for preneed. First, he does not think the government should be in the business of dictating prices; and second, he is with a Catholic cemetery where many consumers are poor and have to make installment payments. There are costs associated with administering installment payments that make many preneed sales more expensive than at-need sales. Ms. Bowman reiterated that this sounds like a lay-away where interest is being charged. Mr. Markowski said the higher cost of preneed sales could be covered in a for-profit cemetery where there is a high mark-up, but in the Catholic cemetery they do not have that flexibility. Mr. Brown argued that if he takes payments over a 60-month period of time, that costs him more. Ms. Bowman wants to keep it simple and have the industry charge across the board what it costs to do both preneed and at-need business. Mr. Ranier said that he has a problem telling a business what it can charge. Mr. Jenkins added that the more regulation we have, the more it is going to cost us. Motion number 5 was defeated.

Delegate Morhaim moved that a cemetery be prohibited from imposing additional handling charges if a marker is purchased elsewhere. (Motion #6) Mr. Markowski agreed with the concept but asked for further clarification. Delegate Morhaim explained that he wanted to prevent consumers from being charged fees for purchasing goods from another party. Mr. Markowski asked about the charge for installing the marker. Delegate Morhaim said his motion was not meant to cover installation, but merely the fees that are sometimes imposed because the good was purchased from a competitor. Ms. Suskin agreed that a consumer should not have to pay when they are not receiving a good and no service is being performed. Mr. Ranier asked if Delegate Morhaim would be willing to exclude installation or maintenance charges from his motion. Ms. Bowman said it should be explained in the contract who is responsible for installation and maintenance. Mr. Canapp asked if this would exclude a supervision fee. Delegate Morhaim said a supervision fee would be reasonable in some instances but not in others. Ms. Suskin said a reasonable supervision fee (i.e. \$10) would not be objectionable. Motion number 6 passed unanimously.

Delegate Morhaim moved that all sellers of death-care goods and services, excluding funeral homes, be required to register with the Office of Cemetery Oversight. (Motion #7) Mr. Markowski asked if this would include religious cemeteries and the Delegate answered yes. Mr. Jenkins said that funeral directors have to be licensed and have continuing education requirements. He asked if the same would apply to other death-care providers. Delegate Morhaim said he didn't see the need for continuing education for other death-care providers. Motion number 7 passed unanimously with Mr. Markowski abstaining.

Delegate Morhaim wanted to assure appropriate audits for preneed sales. Ms. Bowman said there is already an annual requirement for an audit for anyone selling preneed goods and services. A CPA has to sign off on that audit. Ms. Elson said that either a CPA can sign off on the audit or he can do a more in-depth audit and sign that he has reviewed all the appropriate papers. Delegate

Morhaim moved that there be annualized audits across the board for all preneed sellers, an unqualified audit that would be filed with either the Secretary of State, the Board of Morticians or the Office of Cemetery Oversight. (Motion #8) Ms. Elson pointed out that cemeteries that now report to the Secretary of State's Office would be put under the new Office of Cemetery Oversight and also reminded the Task Force that this auditing is done by someone the cemetery hires, not the government. Mr. Murphy added that the Board of Morticians does not currently require an annual audit, but does review the books when they go in for an annual inspection. Delegate Morhaim indicated that he would like the same rules to apply for everyone across the board. Motion number 8 passed unanimously.

Ms. Elson made a motion that contracts must conspicuously disclose costs of all goods and services that are not included in preneed contracts. (Motion #9) She was prompted to make this motion because the Secretary of State's office receives many complaints from families who think they have taken care of everything and then find that there are substantial extra fees to be paid before completing the arrangements. At this point, the family has no choice but to pay.

Mr. Markowski said that most problems occur when children are handling a parent's funeral and they have been told that "everything has been taken care of". Ms. Suskin suggested that the contract state that other charges will be imposed; and if the seller has disclosed this, he has done his duty. Ms. Bowman said the complaints that the Attorney General's Office most commonly receives concern the charge for opening and closing a grave. Ms. Stewart-Duncan suggested that consumers need to know what they will have to face. Motion number 9 passed unanimously.

A motion was made to require that the seller of any preneed good requiring installation disclose who is responsible for installation and any warranties that are included. (Motion #10) Ms. Stewart-Duncan moved that this information be put in a consumer-friendly manner and in uniform forms. (Motion # 11) Mr. Murphy asked to be able to sit down with the Cemetery Oversight Office and help develop some uniform forms. Motions number 10 and 11 passed unanimously.

Mr. Ranier moved that in all preneed sales for goods and services the consumer shall be given a refund on demand prior to need, subject to a reduction of actual costs incurred in setting up the account, administering the account and closing the account, as well as actual cost to the seller. (Motion #12) This motion applied to goods and services not delivered. Delegate Morhaim expressed his concern that if we say "actual costs" this opens the door to a long list of possible expenses. He recognized that the seller should keep something and proposed that he keep the interest earned on the untrusted amount. Mr. Canapp asked if Delegate Morhaim was talking about full refundability and the answer was yes, for now. Mr. Markowski said that the seller can get burned at the front end and suggested that there be reasonable costs not to exceed a certain (i.e. 10) percent. Ms. Suskin said that 10% sounded like a lot and would propose 10% of the money that had been collected. Mr. Markowski said that his average preneed sale is around \$1,000. The cost to set up the account is more than 10% of that sale. Mr. Brown pointed out that cemeteries keep a lot of records and it is expensive to enter a sale on all those records. Mr. Markowski said the cost for setting up an account for a preneed sale at the bank is \$25.00. Ms. Elson reminded the Task Force that there will

be a cost for auditing these accounts every year. Ms. Elson then asked how salespeople are paid commissions. Mr. Brown said it is different in every cemetery. Mr. Markowski said he would pay the commission up front.

Mr. Ranier asked Ms. Rex how commissions are paid. She said the only overriding principle is to make a good business decision. Some cemeteries pay commissions up-front and will charge back to the salesperson if the sale is canceled. Some don't charge it back, and some pay it as the installment payments come in. What is paid relates to the area the seller is working in and how hard it is to get good salespeople. The range for commissions would run from 2% of the sale upward.

Delegate Morhaim said that, in his opinion, there are two ways to approach this issue. The seller could either keep the interest earned on the untrusted amount or charge reasonable expenses with a cap. Ms. Rex asked what money would earn interest if there was no money in trust and also said the IRS considers this interest as income to the consumer for tax purposes. If there was a 10% cap, Mr. Markowski would want it to be based on the retail sale amount, not on the money paid in. Mr. Ranier asked Ms. Rex if she had a problem with a percentage. She said yes, that with all due respect, different costs are involved with a profit and nonprofit cemetery. She explained that there are other ways to fund a nonprofit cemetery, such as a religious cemetery receiving financial support from a church. She said a percentage would have to be higher than 10% to be workable for them.

Mr. Canapp reminded the Task Force that testimony had shown that a very small percentage of people ask for a refund. Delegate Morhaim remarked that in the future there may be more shopping around for these goods and services. Mr. Ranier said that he finds a consensus that there is an expense involved in a preneed sale. Mr. Brown suggested that the Director of Cemetery Oversight examine what the actual costs are and decide if "reasonable" costs are being charged. Mr. Ranier agreed that this was a good idea. Ms. Bowman felt that the issue of what the seller would keep in a refund situation should be a legislative decision and not an administrative one.

A motion was made that if there is cancellation of undelivered goods, the seller can withhold reasonable costs up to a certain percentage. (Motion # 13) The motion passed unanimously.

The Task Force then tried to agree on a percentage that the seller can withhold as reasonable costs. Mr. Porter argued that it should not exceed 10%. Mr. Brown wanted to keep 45% because of the costs of running the cemetery business. Delegate Morhaim asked what Mr. Brown would do now if someone wanted to cancel a preneed contract. Mr. Brown said he would probably give them their money back but that every situation is different. He reiterated that this should be a business decision, not a government decision. The cost of doing business is different in Washington County than it is in Baltimore. Mr. Ranier said that, although he would like to resolve this particular issue, he thinks that perhaps it would take public hearings and intensive study to do so. Mr. Canapp stated that if we are talking about keeping several hundred dollars when a preneed contract is canceled, we have moved away from full refundability. Ms. Suskin has a problem with consumers losing several hundred dollars on items they haven't gotten.

Delegate Morhaim suggested the possibility of 4% as reasonable costs retained by the seller. Mr. Brown said it might be 20 years before those services are delivered. Ms. Rex asked Delegate Morhaim if he intended for the 4% to cover all preneed sellers and the answer was yes. She then asked Delegate Morhaim if he would consider changing the restriction on selling insurance to finance preneed selling on the funeral side. He answered that he did not think so. Mr. Markowski said the 4% figure would penalize the low-end cemeteries because they do not have the mark-up to begin with to absorb the loss.

Mr. Ranier said that since the amount the Task Force decides should be retained in a refund situation could be tied into the amount to be trusted, he wanted to keep the previous motion open until the amount to be trusted could be discussed. He first asked Delegate Morhaim what his feeling was concerning a percentage for trusting. Delegate Morhaim said he would be comfortable with 80% and wants it to be uniform for all sellers of death-care products.

Mr. Murphy said that he had polled the members of the Morticians Board and found that they are comfortable with 100% and wish to keep their trusting at that level. Mr. Canapp reiterated that, although the MSFDA is comfortable with 100%, the MSFDA believes that is unworkable and suggested 80% trusting for everyone. Ms. Bowman said that since we have heard a great deal of testimony showing the differences between costs involved in running a funeral home and a cemetery, should there be a difference in trusting amounts between goods and services. Mr. Canapp argued that the trusting amounts be the same and also suggested that constructive delivery be abolished.

Moreover, Mr. Canapp encouraged the membership of the Morticians Board to keep 100% trusting even if it is not required. Mr. Murphy said that the majority of funeral homes are small and they do not have the expertise to handle complex financial issues, therefore 100% trusting is easy. Mr. Brown likes the idea of different amounts of trusting depending on the good or service. He added that he escrows more for service than merchandise. Delegate Morhaim told the group that he had introduced a bill during the previous legislative session dealing only with goods and it did not pass. Ms. Bowman said that all the data that she has seen has shown that the cost of death-care goods has stayed about even with inflation and asked Ms. Rex if that was true in her experience. Mrs. Rex answered that it was true. Ms. Bowman then asked Ms. Rex if she would be comfortable trusting more for services and less for goods. Ms. Rex stated that the position of her Association is that the 55% currently being escrowed is more than adequate and that the Association could not support an 80% trusting requirement. Mr. Canapp suggested 100% trusting for goods and 80% for services. Ms. Elson wanted to clarify that if a new requirement was put into effect it would only affect sales that were made from the time the new requirement went into effect and would not be retroactive.

There was a discussion on whether more should be trusted for goods or services with several members saying that the cost of labor seemed to be a more volatile cost. Ms. Rex said that, under the current law, if a cemetery has a sale on vaults, the 55% percent of the retail cost that is required to be trusted may not even cover the wholesale cost of a vault. Ms. Rex argued for trusting 110% of the wholesale cost of a good. Ms. Bowman said that her problem with tying a trusting amount

to wholesale cost is that the general public cannot verify what the wholesale cost is, whereas the retail cost is something that can be verified.

Mr. Ruck said that the issue of refundability will drive the trusting numbers. Mr. Ranier said that this was a legitimate point.

Mr. Ranier made a motion requiring that the trusting amounts be the same for cemeteries, funeral homes and 3rd party sellers of death-care items. (Motion #14) The motion passed.

A motion was made to require separating goods and services in consideration for trusting amounts. (Motion #15) The motion passed.

Mr. Brown moved that 55% be trusted to cover merchandise. (Motion #16) Ms. Suskin said that if the preneed seller goes out of business and only 55% has been trusted, the consumer will lose his money. Mr. Goodman asked Mr. Brown what he would do if the preneed buyer moved away and wanted his money back on his plot. Mr. Brown said that he might give the seller his money and resell the plot or the buyer could donate it to a charity or church. Mr. Brown said that he charges a \$25 fee to make up a new deed for the plot. The motion failed.

Delegate Morhaim made a motion to require that 80% be trusted on preneed sales of merchandise with refundability in case of cancellation to include the principal as well as the interest on the trusted amount. (Motion #17) He clarified that 80% is a minimum trusting amount and would not preclude someone from trusting more. Mr. Markowski said that this would penalize those who offer goods and services at a low cost. Delegate Morhaim pointed out that interest earned on the untrusted amount could be used to reimburse the seller for costs. Mr. Markowski indicated that most canceled contracts are canceled during the first three months and there is not enough interest earned to reimburse costs.

Delegate Morhaim then suggested changing his motion to be a 50% split of the interest that had been earned on the account. Ms. Gilson wanted an amendment to consider interest refundability only on a paid contract. Ms. Rex asked if the Task Force was saying at what point the money is trusted and Delegate Morhaim answered that the matter had already been addressed in a motion by Ms. Bowman. The motion passed.

Delegate Morhaim made a motion to require 100% trusting for services with full refundability of principal in case of cancellation. This requirement would apply to all sellers of death-care products. (Motion #18) Mr. Canapp pointed out that on the cemetery side they do not provide many services. Mr. Markowski said that in a cemetery the only service is opening and closing of graves whereas a funeral home provides more services than goods. A funeral home will generally serve a small area whereas a cemetery has to compete in a large area for customers. The motion passed.

Mr. Canapp made a motion that there be no constructive delivery on preneed contracts. (Motion #19) Mr. Markowski felt that bringing this up at this time was sneaking it in the back door

and that this issue should have been handled before other issues were voted on. There followed a discussion of the practice of constructive delivery, whether or not goods stored for long periods of time would last, and the definition of constructive delivery. Delegate Morhaim said that perhaps this was more of a disclosure problem.

Mr. Goodman asked Mr. Markowski what his options were if he had purchased a vault on a preneed basis and wanted to cancel. Mr. Markowski said every seller would handle this differently. Ms. Rex said that in actuality they could repossess a vault. She is not sure but thinks the law has been amended to require the CPA who does the yearly audit to indicate that the amount trusted is actually there. Ms. Elson agreed that the CPA would have to check all aspects. Mr. Doyle said, however, that once the item has been constructively delivered, the buyer owns the item and there is no requirement that any money be escrowed or refunded.

Ms. Maddux asked if it is clear that a buyer has to pay interest on a preneed contract of goods that are delivered whether or not the buyer wants them delivered. Ms. Bowman said yes, this must be disclosed to the consumer.

Delegate Morhaim asked Ms. Rex what percentage of caskets are constructively delivered in her cemetery. She said that none were, but that was a business decision that her company made. Mr. Ranier asked what benefit constructive delivery is to the buyer. Mr. Markowski said the consumer then knows that the item is there for them. Ms. Suskin thinks that the consumer loses all protection when an item is constructively delivered. Mr. Brown said that the Task Force is attempting to make business decisions and will force sellers to look at other alternatives.

Mr. Markowski said that the buyer of a preneed contract is coming into this willingly and the Task Force wants to pass all risk to the business owner. If the trusting amounts are enacted, the best approach for the cemetery will be to deliver all goods as soon as possible. Ms. Suskin countered that she would not want the item now, she wants it when she dies. Mr. Markowski reiterated that he has a problem with the government making a business decision. Delegate Morhaim said that he does not want to tell the business owner how to do business but feels constructive delivery is a sham to avoid escrowing. If the cemetery people can find a solution to avoiding this sham, he would like to hear it. Ms. Rex thinks the mechanism is already there to regulate cemeteries through the Secretary of State's office. They have the authority, they just do not have the money.

Ms. Bowman said that constructive delivery is one of the dichotomies in the law. She thought that transfer of title is important in constructive delivery and said perhaps the burden could be put on the CPA who is signing off on the audit to assure that the vault is stored where it is supposed to be. Ms. Bowman moved that constructive delivery be allowed as it is in current law and that all goods will have to be stored in a way that they will be marketable. The constructive delivery must be disclosed on the contract. (Motion #20) The motion passed unanimously.

Mr. Canapp said that the Task Force was dancing around the idea of trusting and refundability. A question was asked about who pays the storage fee for goods that have been

constructively delivered. A cemeterian from the audience answered that the cost of storage is built into the price of the product.

Mr. Canapp moved that if a product is no longer available from a manufacturer when needed, the seller would provide another product of equal or comparable value. (Motion #21) The motion passed unanimously.

On the subject of preconstruction sales, Mr. Canapp said that if the mausoleum where the space was purchased preneed has not been built when death occurs, the family of the deceased could have the option to either bury the deceased elsewhere in the same cemetery and have the body moved to the mausoleum when it is ready, or return the money so the consumer can make arrangements at another cemetery.

Mr. Ranier asked Ms. Bowman to look into condominium law as that also involves preconstruction issues. Ms. Bowman also asked to talk about interest at another meeting.

The meeting was adjourned at 10:38.

TASK FORCE TO EXAMINE THE STATE'S CEMETERY AND FUNERAL INDUSTRY

Motions from the November 4, 1996 meeting

Motion #1. All sellers of pre-need goods should provide consumers with a general price list of goods and services offered. Motion number 1 passed unanimously.

Motion #2. Consumers must be given a general price list that includes burial services such as ground opening and closings, extra depth internment, inurement of cremated remains and mausoleum entombment, being specifically stated with a statement that prices are effective as of the date of purchase and can change at anytime. Motion number 2 passed unanimously.

Motion #3. Requires that a price list for plots, mausoleums, memorialization and urns be stated in terms of a general price range. Motion number 3 passed unanimously.

Motion #4. Requires that preneed and at-need prices be stated separately, but side-by-side, if they differ. Motion number 4 passed unanimously.

Motion #5. Preneed prices should be no higher than at-need prices. Motion number 5 was defeated. Voting for: Ms. Bowman, Ms. Suskin, Ms. Maddux, Mr. Lachance, Mr. Canapp and Mr. Jenkins. Voting against: Ms. Donaldson, Ms. Gilison, Ms. Elson, Mr. Porter, Mr. Goodman, Delegate Muse, Delegate Morhaim, Mr. Ranier, Mr. Markowski, Mr. Murphy, Ms. Sheila Stewart-Duncan, Dr. Smialek and Mr. Brown.

Motion #6. There should be no additional handling charges, except reasonable maintenance and service charges, if a marker is purchased elsewhere. Motion number 6 passed unanimously.

Motion #7. All sellers of preneed death-care goods and services, excluding funeral homes, would be required to register with the Office of Cemetery Oversight. Motion number 7 passed unanimously with Mr. Markowski abstaining.

Motion #8. There will be annualized audits across the board for all preneed sellers, an unqualified audit that would be filed with either the Board of Morticians or the Office of Cemetery Oversight. Motion number 8 passed unanimously.

Motion #9 Contracts must conspicuously disclose costs of all goods and services that will be required, but not included in preneed contracts. Motion number 9 passed unanimously.

Motion #10. The seller of any preneed good that must be installed must disclose who is responsible for installation to the consumer and also disclose any warranties that are included. Motion number 10 passed unanimously.

Motion # 11. Price lists must be uniform and drafted in a consumer/user friendly manner. Motion number 11 passed unanimously.

Motion #12. With all preneed sales for goods and services the consumer shall be given a refund on demand prior to need, subject to a reduction of actual costs incurred in setting up the account, administering the account and closing the account as well as actual cost to the seller. No vote was taken on Motion number 12.

Motion #13. If there is cancellation of undelivered goods, the seller can withhold reasonable costs up to a certain percentage. Motion number 13 passed unanimously.

Motion #14. The trusting amounts must be the same for cemeteries, funeral homes and 3rd party sellers of death-care items. Motion number 14 passed. Voting for: Ms. Bowman, Ms. Suskin, Ms. Maddux, Mr. Lachance, Mr. Porter, Mr. Goodman, Delegate Muse, Delegate Morhaim, Mr. Ranier, Mr. Canapp, Mr. Murphy and Mr. Jenkins. Voting against: Ms. Donaldson, Ms. Gilison, Ms. Elson, Mr. Markowski, Dr. Smialek and Mr. Brown.

Motion #15. Goods and services must be separated in consideration for trusting amounts. Motion number 15 passed. Voting for: Ms. Donaldson, Ms. Bowman, Ms. Suskin, Ms. Maddux, Mr. Lachance, Ms. Gilison, Ms. Elson, Mr. Porter, Mr. Goodman, Delegate Muse, Delegate Morhaim, Mr. Ranier, Mr. Markowski, Dr. Smialek, and Mr. Brown. Voting against: Mr. Canapp, Mr. Murphy and Mr. Jenkins.

Motion #16. Fifty-five percent will be trusted to cover merchandise sold in preneed contracts. Motion number 16 failed.. Voting for: Ms. Donaldson, Mr. Markowski, Dr. Smialek, and Mr. Brown. Voting against: Ms. Bowman, Ms. Suskin, Ms. Maddux, Mr. Lachance, Ms. Gilison, Ms. Elson, Mr. Porter, Mr. Goodman, Delegate Muse, Delegate Morhaim, Mr. Canapp, Mr. Murphy and Mr. Jenkins.

Motion #17. Eighty percent will be trusted on preneed sales of merchandise with refundability in case of cancellation of all principal to the buyer and all interest to the seller unless the contract is completely paid, in which case the interest will be split equally between the two. Motion number 17 passed. Voting for: Ms. Bowman, Ms. Suskin, Ms. Maddux, Mr. Lachance, Ms. Gilison, Mr. Porter, Mr. Goodman, Delegate Muse, Delegate Morhaim, Mr. Ranier, and Mr. Canapp. Voting against: Ms. Donaldson, Ms. Elson, Mr. Markowski, Mr. Murphy, Dr. Smialek, Mr. Brown, and Mr. Jenkins.

Motion #18. One hundred percent trusting for services with full refundability of all principal to the buyer and all interest to the seller unless the contract is completely paid, in which case the interest will be split equally between the two. Motion number 18 passed. Voting for Ms. Bowman, Ms. Suskin, Ms. Maddux, Mr. Lachance, Mr. Goodman, Mr. Ranier, Mr. Canapp, Mr. Murphy and Mr. Jenkins. Voting against: Ms. Donaldson, Ms. Gilison, Ms. Elson, Mr. Porter, Delegate Morhaim, Mr. Markowski, Dr. Smialek, and Mr. Brown

Motion #19. There will be no constructive delivery on preneed contracts. Motion number 19 failed. Voting for: Ms. Elson, Mr. Goodman, and Mr. Canapp. Voting against: Ms. Donaldson, Ms. Suskin, Lisa Maddux, Mr. Lachance, Ms. Gilison, Mr. Porter, Mr. Markowski, Mr. Murphy, Dr. Smialek, Mr. Brown, and Mr. Jenkins. Abstaining: Ms. Bowman, Delegate Morhaim and Mr. Ranier.

Motion #20. Constructive delivery will be allowed, as it is in current law, with title passing to the buyer and providing that (1) the CPA as part of his or her audit determines that the item has been delivered, and (2) the consumer is provided with notice of the consequences of constructive delivery. Motion number 20 passed unanimously.

Motion #21. If a product is no longer available from a manufacturer when needed, the seller should provide another product of equal or comparable value. Motion number 21 passed unanimously.

TASK FORCE TO EXAMINE THE STATE'S CEMETERY AND FUNERAL INDUSTRY

MINUTES

November 18, 1996

Members Present

Edward Ranier
Senator Hafer
Delegate Morhaim
Harriet Suskin
Margot Gilison
Frank Porter
Earl Canapp
Charles Brown

Judy Donaldson
Frank Markowski
Rebecca Bowman
Michael Lachance
Susan Elson
David Goodman
Tom Murphy
Joe Jenkins

The meeting was called to order by the Chairman, Mr. Ranier at 6:03. Mr. Ranier announced that Mr. Frank Haswell had resigned from the Task Force because his company relocated him to California. The Maryland Freestate Cemetery Association has requested that another representative, Ms. Sarah Rex, be allowed to take Mr. Haswell's place. The appointment must be made by the Governor's Office.

Mr. Porter wanted one of the phrases "buried in the same cemetery" to be removed from paragraph 4, page 11 of the minutes for November 4, 1996. With that correction the minutes were approved.

Ms. Elson made a motion that all preneed contracts conspicuously display the legal requirements and rights for cancellation and a refund. The motion passed unanimously.

Mr. Ranier had received a fax from Miriam Rosenberg concerning her experience with a cemetery. Ms. Bowman was asked to follow-up on this matter. Mr. Goodman had also talked with Ms. Rosenberg and he recounted her concern with the abusive manner of the cemetery manager.

To resolve a matter that remained unclear from the November 4 meeting, Ms. Mitchell asked Mr. Ranier to get a clarification from the Task Force members on the issue of when money received on an installment basis would be trusted. Ms. Bowman made a motion that payment made on preneed contracts be trusted on a payment-by-payment basis instead of in a lump sum. In discussing the motion, Mr. Brown felt the point was moot because the Task Force had already voted on an 80% trusting amount. The motion passed with Ms. Bowman, Ms. Suskin, Mr. Lachance, Ms. Gilison, Ms. Elson, Mr. Porter, Mr. Goodman, Delegate Morhaim, Mr. Ranier, Senator Hafer and

Mr. Canapp voting in the affirmative and Ms. Donaldson, Mr. Markowski, Mr. Murphy and Mr. Brown voting in the negative.

There were two issues that were not dealt with at the previous meetings that the Chairman wanted the Task Force to consider. The first was unconstructed mausoleums. Mr. Ranier stated that the issue in consideration concerns when a person has purchased a place in an unconstructed mausoleum on a preneed basis and dies before the mausoleum has been completed. Ms. Bowman had been asked to look into condominium law to see if there was any existing law that would be useful.

Ms. Bowman stated that she found no helpful law in the condominium area, but found something similar with health clubs. People sometimes buy memberships before the health club is ready to open. The owner of the club must post a bond with the Consumer Protection Division of \$50,000 before they start selling memberships and then increase the amount of the bond if sales exceed the \$50,000. The contract must include the opening date, a description of the facilities and services that will be available, and a statement saying the purchaser can cancel if the club is not opened on time. The buyer also has the right to cancel within three days after the opening if the consumer finds the services are not as they were offered.

Although laws governing health clubs would not be applicable to mausoleums, Ms. Bowman suggested that they are the closest available in our present law. Mr. Brown asked Ms. Bowman if the Attorney General's Office had received complaints about unconstructed mausoleums and the answer was no. Mr. Brown thinks the cemetery handles any problems arising out of an unconstructed mausoleum space bought on a preneed basis by offering burial in another mausoleum on the cemetery grounds or making other arrangements with the family. Ms. Bowman said the consumer should know ahead of time when the mausoleum will be completed and what other arrangements can be made if it is not ready. She expressed concern over what would happen if a company goes out of business and the mausoleum never gets built.

Mr. Canapp said he thinks the family should have the choice of moving to another place in that cemetery or getting their money back. Mr. Brown said that it is a moot point because the Task Force has already decided that 80% of the money would be trusted. Mr. Canapp asked if mausoleums had been included in the cemetery goods motions and Mr. Ranier said he didn't think so. Mr. Markowski questioned putting the date of completion on a contract because weather problems could always cause that date to be delayed. Ms. Bowman asked why that possibility would not be built into the date in the first place. Mr. Markowski answered that you would have to put in two years or so to cover the delay possibilities. Ms. Suskin said the consumer should have a date of completion on a project.

Mr. Ranier asked for a motion on the mausoleum issue. Mr. Canapp moved that in the preneed sale of an unconstructed mausoleum, if the mausoleum has not been completed at the time of death, the consumer should be given a choice of burial in the ground, in another crypt on the grounds, or a refund and the option to make arrangements elsewhere. The motion passed unanimously.

The next issue discussed concerned whether interest should be charged on preneed contracts. The Attorney General's Office states that unless goods and services are delivered, a cemetery cannot charge interest. Ms. Bowman advocated that interest not be charged but that a service fee, such as that charged for layaway, be allowed.

Mr. Ranier asked Ms. Rex to respond for the cemetery industry. Ms. Rex said that half the members of the Freestate Cemetery Association are independents and they market to middle or low-income families. The cemeteries perform a service by educating people on preneed issues. Also, the families they deal with often cannot get credit through a lending institution in order to pay the cemetery in a lump sum. The cemeteries have costs associated with collecting and handling these accounts and want to be able to charge interest to cover these expenses. They could charge a service fee, but would rather charge interest. The Cemetery Association can find no other state with a similar prohibition against charging interest on preneed sales. Ms. Rex suggested that people are used to a finance charge when they buy other things. She added that cemeteries are in the forefront of preneed planning.

Mr. Devin Doolan spoke next and began by asking the Task Force to examine the fundamental question of whether it is appropriate to charge interest on goods and services that are not delivered. He added that people do not want them delivered. Mr. Doolan stated that the law on the interest issue is confusing in Maryland. In his opinion, if you charge interest you will help people who cannot go to a lending institution because they cannot get credit. He said that if a cemetery enters into a contract with someone and then sells the contract to a lending institution, the lending institution can charge interest on that contract. Mr. Doolan indicated that no other state has an absolute prohibition on imposing interest. They have limitations, but not the inequity that exists in Maryland law.

Mr. Ranier asked if it was fair to say that the interest charged would offset costs of handling the preneed account. Mr. Doolan said yes, interest is being charged to cover the services.

Ms. Suskin said that if she got money from a bank and purchased something, she would have the use of the item while she is paying the interest. With a preneed purchase at a cemetery, the cemetery has all the money and the consumer has received nothing.

Mr. Lachance asked what happened to the interest if there was a cancellation. Ms. Rex said that the interest would be used to monitor and handle the account. A cash purchaser doesn't pay interest. The consumer has received a benefit by receiving a guaranteed price. The cemetery also has to pay the tax on the profit from the entire sale the year it is made, even though they do not have all the money. It has been a hallmark of the cemetery industry that people have been able to pay on an installment basis.

Mr. Lachance asked if under current federal law, the cemetery is paying taxes on the interest. Ms. Rex said she could not answer saying that was part of the entire corporate tax liability.

Ms. Bowman again compared the preneed sale to a layaway purchase. In the layaway purchase, the retailer has incurred the cost of the goods the person lays away. With a cemetery preneed purchase, the cemetery is not incurring the costs of goods. In answer to the concept that cemeteries are doing consumers a favor by selling preneed to low-income families, Ms. Bowman questioned whether the high rate she feels many cemeteries charge as interest is helpful. Mr. Ranier asked about the cost of providing the installment service. Ms. Bowman said that if there is a lot of collection needed, perhaps the cemeteries are lending to the wrong people. She suggested that the costs of handling these accounts is minimal and has already been factored into the costs of goods and services.

Mr. Brown said that if he has purchased a marker and inscribed a name on it, he cannot sell it to someone else. Ms. Bowman said that in layaway there is a 10% charge if you default. Mr. Brown pointed out that most layaway sales are completed within 6 months, whereas many preneed cemetery contracts are not completed for years. Mr. Canapp said that the cemeteries already have 20% of your money to cover the costs.

Ms. Rex said that all the cemeteries that she has knowledge of offer reasonable rates of interest that are typically lower than banks and credit cards. She added that consumers realize that it is a legitimate business expense and that cemeteries have a right to recoup the costs. If the independent cemetery cannot recoup his costs, he will not be able to sell to as many families.

Ms. Donaldson asked Ms. Rex if anyone was required to buy preneed and Ms. Rex said no. Ms. Donaldson then asked Ms. Rex if the consumer could go to a bank and get the money for a preneed contract and then pay the entire amount to the cemetery. The answer was yes. Ms. Donaldson asked Ms. Rex if purchasing the preneed contract would lock her into a price. Mr. Rex answered yes. Ms. Donaldson then pointed out that the cemetery does take a risk by locking in a price. Ms. Rex answered yes, and explained that, if the person dies 20 years after purchasing the preneed contract, the cemetery will have to incur the increased costs of performing the services in the later years.

Ms. Bowman pointed out that retailers do help the low-income person by letting them put items on layaway and pay it off a portion of the cost at a time. The retailer does not raise the price of the goods that are being put on layaway.

Senator Hafer asked Ms. Rex when the cemetery can take the expense deduction on taxes. Ms. Rex did not know. Senator Hafer asked if cemeteries were currently breaking the law by charging interest on installment sales. Mr. Doolan emphasized that they can charge interest on goods and services that have been pre-delivered before the death of the contract purchaser. This creates an awkward situation, if the person dies before the goods and services are delivered, there is some uncertainty. Senator Hafer said that he has no problem charging interest where goods and services have already been delivered.

Ms. Rex reaffirmed that, to her knowledge, the cemeteries in the Freestate Cemetery Association do comply with the law. Mr. Hafer responded that even in the funeral industry, there

are those who stretch the law. Ms. Elson asked Ms. Rex if the interest was at the beginning of the installment payments. Ms. Rex answered yes, that she assumed it was a sliding scale of interest called the rule of seventy-eight. Mr. Ranier suggested tabling the discussion of interest until the next meeting.

Mr. Ranier asked Ms. Bowman if one could act as their own cemeterian by arranging for burial on private property. Mr. Ranier asked the DLR attorneys to look into this issue.

Meredyth Smith Andrus from the Antitrust Division of the Attorney General's Office spoke to the Task Force. She said that most of their complaints concern (1) cemeteries making it difficult for third-party sellers of monuments, and (2) sales of merchandise (particularly caskets) being obstructed by the funeral home industry. Concerning the second complaint, Mr. Curran wrote an opinion interpreting the law concerning the sale of caskets by non-funeral directors. The second issue was not followed extensively because of the opinion. Ms. Andrew's office is still getting calls from unhappy consumers. In her opinion, the law is not strong enough to allow them to be able to help the consumer and stronger laws are needed. They cannot win many cases under the present law so they cannot go after the offenders.

Mr. Ranier said he would like to see the Antitrust Division draft some legislation the Task Force could look at. Ms. Bowman asked Ms. Andrus to speak more specifically about some of the cases she had dealt with. Ms. Andrus said many cases involve cemeteries that are discouraging outside sales by (1) charging exorbitant fees; (2) telling the consumer that outside sales are not allowed; (3) telling the consumer that his monument will not be cared for if it is purchased from an outsider seller; and (4) putting papers in front of the consumer and getting them signed without the consumer knowing what he has signed. These are all unethical acts, but do not fall under any antitrust laws.

Mr. Ranier said the Task Force has covered many of these issues in our previous work. Mr. Ranier asked DLR staff to send Ms. Andrus a copy of the legislation and the motions that have already been approved.

Ms. Donaldson said that setting ethical standards would be the responsibility of the Director of Cemetery Oversight aided by his advisory council.

Mr. Jenkins asked Ms. Andrus what kind of complaints the office received regarding funeral homes. She said that companies trying to get into the death-care goods business had been told by some funeral homes as well as casket companies that it was illegal for them to do this.

Mr. Ranier then asked the Task Force to look at the list of 9 items ("List of Issues for Discussion") related to the funeral industry. He compiled this list from issues that came out of public hearings as well as other issues that had been deferred. The Task Force only has two more meetings. He would like to take a vote on all remaining issues at the December 2 meeting and have the December 16 meeting to look over the draft report being prepared by DLR staff.

The first issue presented was number 5 which read: Sale of burial insurance - Should the present prohibition and present alternative be continued? It was first recommended that this whole question be referred to the Insurance Commissioner. Ms. Mitchell said she had talked to the Insurance Commissioner's Office and while they are not opposed to changing the law, they will not introduce legislation. Mr. Murphy said that, under the current law, there can be no direct tie-in to a preneed contract through an insurance vehicle. However, a person can buy insurance and use the proceeds to finance final arrangements. Mr. Canapp said that he is very interested in this issue and would like to know more about it. He would like to hear from the Insurance Commissioner. Mr. Ranier asked Ms. Mitchell to contact the Insurance Commissioner and see if someone from the office would speak at the next Task Force meeting.

Issues Numbers 1, 2, and 3 were deferred to the December 2, 1996 meeting.

Issue number 4 asks if the composition of the Board of Morticians should be revised to include additional consumers or other members. Mr. Ranier asked Mr. Murphy about the present make-up of the Board of Morticians. Mr. Murphy said that there are 12 individuals on the Board. Eight members are practicing morticians and four are consumer representatives. He said the number of consumer representatives was increased from two to four about three or four years ago. Ninety percent of the agenda of the Board is open to the public and the Board would like for more of the public to attend. According to Mr. Murphy, the consumer members are very vocal. Mr. Murphy volunteered to try to get one of the consumer members to attend the December 2 Task Force meeting.

Concerning Issue number 6, Mr. Canapp said that federal law governs whether or not there can be a cap on the amount a Medicaid recipient can set-aside for funeral expenses. At the present time, there is no cap. However, Mr. Ed Woolman who is chief of the Division of Eligibility with the State reviewed records and found no evidence of abuse of the Medicaid set-aside. As this issue is controlled by federal law, Mr. Ranier said it would not be considered further by the Task Force.

Issue number 7 asks if non-morticians should be allowed to own an interest in a funeral home and whether the present Maryland incorporation law should be continued. Mr. Gonce, who has served many years on various State and federal funeral regulatory boards, was asked to speak on the history of this issue. He began by explaining that there are two corporate laws which affect funeral homes in Maryland. The first law creates INCs. The other is the P.A. or professional association. Only a licensed mortician can form a P.A. and have no other stockholders other than licensed morticians. The INCs were created in the early 40's in response to ethnic and social groups who wanted to form their own funeral businesses. After numerous abuses by INCs, the law was changed in 1945 to limit the number of INCs to those already in existence. Most problems arose because of out-of-state businesses abusing them. This resulted in 59 INCs being grandfathered under the new law. INC charters are good for only one location. Mr. Gonce is of the opinion that the resulting prohibition against people who are not licensed morticians forming new businesses is in the best interest of the consumer. There have been two challenges to the law forbidding new INCs in the past few years and both have failed. As it is, large out-of-state corporations are buying up the

existing INC charters. If additional INCs were created, Mr. Gonce fears that thousands of morticians would be severely hurt by the influx of the large corporations.

Ms. Bowman asked Mr. Gonce if she could open her own funeral home if she became a licensed mortician. Mr. Gonce answered yes and added that she could incorporate as a P.A. The limited number of INCs are for those non-licensees who hire licensed morticians to operate the funeral home. Mr. Murphy said that there are 59 INC charters in the State. Ms. Bowman asked Mr. Murphy if the percentage of complaints received by the Board of Morticians is higher with the INCs. Mr. Murphy said that he does not see a big difference. The Board of Morticians has no control over non-licensees; however, the Board has the authority to go to the Circuit Court and take legal action against a funeral home, such as revoking the establishment permit.

The Task Force engaged in a lengthy discussion of whether or not the law should be changed to allow more INCs in Maryland. Delegate Morhaim expressed the view that it might be better if no INCs had been allowed in the first place but we cannot do away with them. There were arguments that the big outside corporations would be everywhere if more INCs were created as they are now limited to buying one of the 59 existing charters as they become available with only one location possible for each charter. However, there was the opposing argument that only the big players can buy these existing charters, and by creating more INCs, the State would be diluting the value of the existing charters and giving people other than the large corporations an opportunity to form INCs. The group recognized that Maryland's laws are inconsistent regarding other professions, such as law firms which can be formed only by licensed attorneys, while medical organizations (i.e., hospitals and HMO's) can be formed by businessmen other than physicians. Senator Hafer pointed out that a P.A. can still become a big corporation.

Mr. Richard Cody spoke to the group in support of changing the law to create more INCs. He presently owns Resthaven Memorial Gardens, a cemetery in Frederick, and would like to have a funeral home with the cemetery. Under the current law, Mr. Cody said that he cannot own a funeral home and call it Rest Haven Memorial Funeral Home. If he hired a licensed mortician to form a P.A. and opened a funeral home there, the funeral home would have to carry the name of the mortician. Mr. Cody would like the funeral home to carry the same name as the cemetery. If an INC. license was available, the price for one is currently ranging from \$100,000 to \$150,000. Mr. Cody reminded the Task Force that he had submitted a position paper on this issue and encouraged members to read it.

Mr. Brown related his own experience of purchasing a cemetery from a corporation that owned an INC. The funeral home had burned down and the charter was sold. The buyers of the charter transferred it to a metropolitan area home. Mr. Brown is constantly asked why he does not rebuild the funeral home, but, because he is not a licensed mortician, he can't.

Mr. Cody said that about 1/3 of the INC. charters are currently in the hands of the big three corporations: Stewart, Loewen, and S.C.I. The question was raised as to what happens to a P.A. when the owner dies if none of his children are interested in becoming licensed morticians and continuing the business. The answer was that the business could be sold to another licensed

mortician but the name of the business would have to change to the name of the new licensed mortician. Mr. Cody told the Task Force that there are only two other states in the union where you cannot incorporate a funeral home as an INC.

Mr. Goodman expressed the opinion that the Task Force is looking at important and major changes in the industry as the large corporations come in and the cemetery and funeral businesses are increasingly intertwined. This is making it seem more important that they all be regulated by one entity.

Mr. Doyle expressed his opinion that the issue of opening up the State to more INCs is being pushed by the large corporations and urged the Task Force to think about who will benefit by such a decision. In his opinion, the P.A.s do not need this. He is concerned about the accountability of non-Marylanders owning funeral businesses. Presently, S.C.I. is attempting to buy the Loewen Corporation, which is headquartered in Canada.

Associated with this issue is the provision in the law that allows the surviving spouse of a mortician with a P.A. funeral home to operate a funeral home without being a licensed mortician. This law was originally made to allow the surviving spouse to continue to have a means of livelihood in the event of the death of the mortician spouse. A licensed mortician has to be hired to handle the responsibilities of a mortician. According to Elizabeth Groninger, the Executive Director of the Maryland State Board of Morticians, the surviving spouse has 30 days after the death of the mortician spouse to notify the Board with the name of the new supervising mortician. The surviving spouse must also take the law portion of the Mortician's exam in order to maintain the surviving spouse license. Mr. Murphy reported that there are 13 surviving spouse P.A.'s in existence in Maryland now. Delegate Morhaim said that this provision has already opened Maryland up to funeral homes, other than the 59 INCs, being owned and operated by non-licensed morticians.

Mr. Ranier asked the members to be prepared to vote on Issue number 7 at the next meeting. Before voting, Ms. Gilson asked the members to look at the issue from the consumers' viewpoint and try to decide which direction would most benefit consumers. Mr. Ranier added his request that members attempt to decide whether more funeral homes being created would benefit the consumer or not.

Mr. Ranier summarized a letter he had received from Mr. Harry Witzke which advocated that many of the tasks now being performed by licensed morticians could be performed by personnel under the mortician's supervision, thereby reducing the costs to the consumers. Mr. Murphy said that many responsibilities are already being handled by unlicensed personnel under the supervision of the licensed mortician, but maintained that certain jobs (such as selling, and being with a body when it is transported to a funeral home and cemetery) should continue to be handled only by a licensed mortician. When a question was raised as to the salaries earned by a licensed mortician, Mr. Brown said that a mortician makes around \$55,000 a year, while Mr. Murphy said the average is probably around \$30,000 to \$35,000, with \$55,000 to \$65,000 earned by the heads of funeral homes.

Delegate Morhaim asked if, in light of the Task Force's motion to subject anyone selling death-care goods to the authority of the Cemetery Oversight Authority or the Board of Morticians, would the morticians object to a non-licensure selling death-care products at a funeral home. Mr. Canapp said that he would have an objection, while Mr. Murphy said that he would because the sale of those products cannot be separated from arrangements. Mr. Ruck agreed with Mr. Murphy that making arrangements cannot be separated from merchandise sales.

Mr. Ranier asked the Task Force to think about what tasks they feel could be delegated to a non-licensed person in a funeral home and be prepared to discuss and take a vote on the issue at the December 2 meeting.

Issue number 9 asked if an apprenticeship should be allowed only when the individual is attending mortuary science school or has graduated and what should be the limit to the number of years an apprenticeship can be allowed. Delegate Morhaim stated that he had been very interested in this issue for some time, after finding that there were individuals serving apprenticeships for 5 to 7 years without even beginning their mortuary science education. Mr. Murphy said that the Board of Morticians is proposing a change in the way the apprenticeship program works to require that an apprentice be starting the third of the three modules of courses required at mortuary science school before being allowed to become an apprentice. Ms. Bowman said she has heard the concern that apprenticeship program was used as a method to keep the costs of running the funeral home down and a means of keeping people out of the business. Mr. Murphy said that the concern Ms. Bowman spoke of had been expressed by some people who could not get apprenticeships. However, with the industry changing, personnel is needed. Catonsville Community College helps place people in apprenticeship positions. Mr. Jenkins said he is on the Apprenticeship Committee of the Morticians Board and they have no shortage of apprentices.

Ms. Jacobi spoke to the group and told of the recent experience of a local family which had been widely reported in the news media. When the funeral procession arrived at the cemetery to bury a woman, the family found the grave had not been opened and the cemetery was totally unprepared for the burial. In ensuing discussions with the cemetery, three family members physically attacked the manager of the cemetery. The police were called and tragically, the daughter of the woman who was to be buried died in the limousine while waiting for these issues to be resolved. (Task Force members were already in possession of many of the articles that had been published reporting the incident.) Ms. Jacobi then cited some of her concerns about abuses in the industry involving the huge mark-up of the cost of merchandise she has found in doing research. She lauded some members of the Task Force for their work as advocates for the consumer and criticized others for what she feels is promoting their own self-interest. She said that her primary concern is that legislation that has some teeth to help protect the consumer comes from the work of the Task Force.

Following Ms. Jacobi's presentation, Mr. Jeremy Bell of the Harmony Memorial Park (the cemetery Ms. Jacobi spoke to the group about) described the incident as regrettable and briefly gave the cemetery's account concerning what happened.

Mr. Goodman suggested that the Task Force make a recommendation that some kind of certificate program for cemeterians be created at Catonsville Community College.

Mr. Ranier adjourned the meeting at 9:40.

CEMETERY AND FUNERAL INDUSTRY

MINUTES

December 2, 1996

MEMBERS PRESENT

Edward Ranier, Chairman
Senator Hafer
Senator Madden
Delegate Morhaim
Delegate Muse
Senator Trotter
Charles Brown
Tom Murphy
Sarah Rex
Frank Markowski

Margot Gilison
Sheila Stewart-Duncan
David Goodman
Harriet Suskin
Frank Porter
Becky Bowman
Judy Donaldson
Earl Canapp
Joe Jenkins
Rebecca Bowman

Mr. Ranier opened the meeting at 6:05. He asked the members to review the draft report that had been passed out so it can be discussed at the next meeting. Mr. Ranier welcomed Ms. Sarah Rex who was appointed to the Task Force to take the place of Mr. Frank Haswell.

As the first order of business, Mr. Ranier asked for any corrections or additions to the minutes of the last meeting. Mr. Porter asked that on page 8, in the second to last paragraph, an amendment be made to reflect that SCI is attempting to buy the Loewen Corporation - the opposite was reported in the minutes.

Mr. Goodman had two questions, the first concerned the percentage of the incorporated charters (INCs) that are owned by large corporations in the state. The Task Force had been told the percentage SCI owned but there had not been a clear response as to how many Loewen and Stewart owned. Mr. Goodman wanted the minutes to reflect that the large corporations sometimes want to locate funeral homes on the grounds of cemeteries. He also wanted something added about the large corporation's representation on the State Board of Morticians.

On page 9, in the third full paragraph, Mr. Canapp said that he would have an objection to a non-licensee selling death care products at a funeral home which is the opposite of what was reported in the minutes. The name of Mr. Gonce was incorrectly spelled in the minutes as Mr. Ganz.

Mr. Porter suggested that on page 6, in the third paragraph, clarification should be added to reference the list of issues for discussion. He also asked that a definition for INCs be added.

And Ms. Jacoby should be spelled as Ms. Jacobi. In the first full paragraph on page 10, Mr. Porter wanted the last sentence to read that Ms. Jacobi hopes that the Task Force makes recommendations that will result in the General Assembly passing legislation that has some teeth to help the consumer.

Mr. Goodman wanted page 10 to reflect that, right before adjournment, he had made a request that the Task Force make a recommendation to create some kind of certificate program at Catonsville for cemeterians. With these recommendations, the minutes were approved.

Mr. Ranier discussed a letter that he had received from Mr. John Schmitt relating to the treatment he had received at the Harry Witzke funeral home. The letter contained a question about how the Board of Morticians conducted an inspection of Mr. Harry Witzke's operation. Mr. Ranier asked that this be given to the Chairman of the Board of Morticians to respond to at the next meeting. Letters from Mr. Mason and the pastor of a Baptist Church will be distributed to members.

Mr. Ranier raised one new issue for the Task Force. Baltimore's Channel 2 broadcast a story concerning the price of caskets. Under the FTC regulations, while the consumer has to be given a copy of the general price list, the consumer does not have a right to retain that price list. Mr. Ranier said that many funeral homes give this list to the family. The reporter made the point that having a copy of the price list is important because the consumer can have it available when he does comparison shopping for preneed purchases. Mr. Ranier thinks this is an issue the Task Force hasn't considered. In Mr. Ranier's opinion, in order to have a level playing field, if one industry has to provide this list, it should be a rule across the board. He thinks the discussion of the Task Force should consider whether the consumer, on request, should have the right to retain the price list when he leaves the seller.

Ms. Bowman said that consumers should be able to take the price list with them and doesn't understand what disadvantage there would be to the consumer having it. Mr. Brown said that customers would be able to use it as a bidding tool when going to another seller. Mr. Ranier said that you can do this when you buy a car. Mr. Brown agreed but pointed out that you only have the price of one car, not every car in the inventory of the dealer. Mr. Ranier agreed that you would have the price of only one car, however, you can take that price with you. Mr. Murphy asked if state regulations can overrule federal regulations since the FTC does not require a price list be given for the potential buyer to keep. Mr. Ranier replied that you can have stronger regulations if there is a good reason, but you cannot have a weaker requirement. Ms. Rex wanted to know if anybody knew the reason for the FTC regulation. Ms. Bowman wanted to know if anybody had talked to FTC staff to see if this was actually the way the regulation was interpreted. Ms. Suskin said that she would not do business with someone who would not give her a list.

Mr. Canapp agreed with Ms. Suskin that, if a consumer ask for the price list, he should be given one. Mr. Canapp moved that for anyone selling preneed merchandise, if the consumer requested the price list, he should be given one. An amendment was added that this motion would only apply to vaults and caskets. The vote passed unanimously.

At the last meeting Mr. Doolan discussed the issue of cemeteries charging interest on installment sales of undelivered death-care goods and services. Mr. Ranier gave the floor to Mr. Doolan to make any additional statements he wished on the matter. Mr. Doolan reminded the Task Force that Maryland is one of very few, if any, states where interest on preneed sales of undelivered goods or services cannot be charged. He urged the Task Force to think long and hard about the fairness of not being able to charge interest on an installment purchase. In any other installment purchase, the seller has the right to charge interest. If the preneed contract is sold to a bank, the bank can charge interest. He asked if it was not in the public interest to let the cemetery charge interest as long as it is at a fair rate.

At the previous meeting, Mr. Brown asked Ms. Bowman to check into whether the service charges used in layaway sales is considered interest. Ms. Bowman said it is not written anywhere whether it is interest or not. Mr. Brown asked if the cemetery could charge a service charge. Ms. Bowman reiterated her argument that contracts on a layaway purchase cannot charge interest - they can only charge a service fee. If the Task Force wants to recommend that this position be changed, they can do so. Ms. Suskin said that paying interest on something you have not received is wrong. When you go to a bank, you get the money up front and you are using their money. If the buyer defaults, the cemetery hasn't lost anything because they haven't done anything. Mr. Ranier asked Ms. Rex to make a motion on this issue. Ms. Rex moved that the Task Force recommend that the legislature delete all references to interest in Title 5. The motion was opened for discussion. Ms. Bowman pointed out that the motion should be more specific because to remove all references to interest would remove references unrelated to the issue the Task Force was considering. The motion to remove all references was defeated.

Senator Trotter made a motion to keep Title 5 the way it is under current law with respect to the issue of imposing interest on installment sales. This motion was passed by a majority, with Mr. Brown, Mr. Jenkins, Ms. Rex, and Mr. Markowski voting in the negative.

At the previous meeting, Senator Hafer asked Ms. Rex when the expenses of installment sales are reported for taxes. Ms. Rex said some expenses, such as commissions, are reported as of the date of the signing of the contract, while others, such as labor costs, would be reported when they were actually incurred.

Mr. Ayling, of the Maryland Insurance Commission, spoke to the Task Force regarding the confusion existing with respect to the sale of life insurance policies to pay final expenses. The proceeds of life insurance are used to pay for funerals. The problem arises when the policy is sold by a funeral home, with the funeral home designated as the beneficiary. Mr. Ayling provided a handout to members which cited the present law and problems associated with it. In the 1980's, bills allowing tie-in sales were introduced in the legislature and defeated about 6 times. The Insurance Commission never took a position to oppose or support any of the bills.

Mr. Ranier asked Mr. Ayling if he had any idea why tie-in sales were not allowed. Mr. Ayling explained that in Maryland tie-in policies are prohibited for any purchase, not just funeral sales. The Insurance Commission has suggested that the industry ask the legislature to change the

law if they do not like it. The Insurance Commission's concern is that agents, while selling tie-in policies, may mislead policy holders by promising more benefits than the policy actually provides. For example, the price of a funeral may be quoted at \$5,000 and ten or twenty years from now the price may be substantially higher. Mr. Ranier asked whether, if an insurance agent has offered something that is not true, wouldn't that be fraudulent. Mr. Ayling agreed that it would be fraudulent, but finding it so might be too late to help the consumer. A funeral director can be licensed to sell insurance, but cannot have the funeral home be assigned as beneficiary. Ms. Gilison said that the beneficiary of an insurance policy is supposed to have an insurable interest to the purchaser while alive, not merely when dead.

Mr. Ben Jenkins of Monumental Life Insurance Company spoke next to the Task Force. Monumental Life has relationships with funeral homes outside the state of Maryland where they sell tie-in policies. He asserted that the advantage of providing the tie-in policy is that when meeting with consumers on a preneed basis, the consumer will have several types of payment plans to choose from. Maryland has a trust fund deposit plan that is available. Preneed contracts are increasingly being sold. In states where the tie-in policies are sold, the policies are usually assigned to funeral homes or funeral trusts, with the provision that the funeral home will accept the proceeds as payment in full. The proceeds are not taxed at all to the purchaser if they are part of the death benefit.

Monument Life is licensed to do business in 49 states and the District of Columbia. The company offers tie-in policies in 46 states and the District of Columbia. Ms. Bowman asked if there was any limit on commissions paid in states where these policies are sold. Mr. Jenkins said he was not aware of any limitations, but does not think commissions are being used as any kind of competition because the policies are sold for relatively small sums of money.

Ms. Gilison asked if the underwriting is any different from a full-life contract. Mr. Jenkins answered yes, because the purchasers are usually older. Ms. Gilison said she was asking if there are any underwriting guidelines. Mr. Jenkins said yes, there are health questions and guaranteed products available on an individual and group basis.. Mr. Jenkins asserted that a guaranteed contract would be good for a person who otherwise could not qualify. The products are priced according to what the state allows. Ms. Gilison said that Maryland is strict in its insurance laws.

Ms. Bowman asked if an individual could purchase this type of policy directly from an insurance company without going to a funeral home. Mr. Jenkins said that a policy could be sold in Maryland, but not to finance a preneed contract. The contracts Monumental Life sells are approved for sale in Maryland but can't be sold here. In Maryland, only a funeral director can make arrangements for a funeral and he cannot sell these tie-in policies, so they cannot be sold in Maryland.

Senator Madden asked if the policies were owned by the policyholders. Mr. Jenkins said generally yes, but they can be assigned to a trust. He asserted that this is the same thing done with the preneed trusts used here in Maryland now with an irrevocable trust. The owner maintains the right to change the beneficiary. Their company does not use irrevocable and revocable trusts generally, but rather assigns them to a trust and the trust follows the consumer to make sure the

consumer gets the money. Mr. Jenkins' company sells only through licensed funeral homes in other states.

Colin Braybrooks and Michael Wiley, of United Family Life Insurance Company which is domiciled in Georgia, testified that United Life offers the tie-in policy in other states but is not allowed to here under Maryland law. Maryland is what United Life calls a "final expense state". After consultations with the Insurance Commissioner and the Attorney General's office, United Life created a program called a final expense program. Under this program, the funeral director is an agent for United Life. The consumer chooses the type of funeral he wishes to have and the director will sell him a policy to cover the cost of that funeral. The policy face amount will increase with the Consumer Price Index (CPI).

Ms. Gilson asked what percentage of the policies sold were single payment policies. The majority are single-payment policies. Ms. Gilson asked the rate of return on a single payment policy. The representative asserted that this was probably not a figure the company would divulge, although it was estimated to be possibly 8 to 15%.

Mr. Goodman asked what were the costs involved for the average consumer. The United Life representatives said that would be difficult to answer because it varies by funeral home. A funeral could be priced at \$3500, \$5000, or \$6500. The monthly payments depend on the age of the purchaser and other variables. Mr. Goodman asked how long consumers usually pay when they choose installment payments. Again, there are too many variables to give an exact answer.

These "final expense program" policies are sold by funeral directors since only licensed morticians are allowed to make funeral arrangements in Maryland. Also the amount of these policies is rather low and individual agents don't find them profitable. Ms. Bowman asked what happens if the consumer changes his mind, can the policy be canceled. The answer was yes; however, as with any other policy, the consumer would only get the surrender value. In Maryland, the proceeds of the policy could be used in any way and do not have to be used for death-care arrangements.

Mr. Ranier asked what are the benefits to the consumer with a tie-in policy. Mr. Jenkins said that the consumer has more protection because he has a contract with the funeral home and knows that his needs have been taken care of. Mr. Brown asked how much a person would pay for a \$3500 funeral over the life of a tie-in preneed policy. Mr. Braybrooks and Mr. Wiley said that the amount paid would depend on the age of the buyer. Mr. Brown asked if the consumer would pay more than \$3500. They may or may not, depending on their age at the time of purchase. Mr. Jenkins said that with the bank trust you would have to pay the entire \$3500, whereas with an insurance company, you might pay only one payment, die, and the \$3500 would still be paid. Ms. Rex asked whether, when you pay over a period of time, you pay more and the answer was yes.

Mr. David Mason reported that he had spent the afternoon in the law library researching the tie-in insurance policy issue. Maryland's present insurance code is Article 48A. A Committee has been working for the past several years to rewrite Article 48A. On October 1, 1997, the present

Article will be replaced. The tie-in section, § 228 of Article 48A is part of subtitle 15, Unfair Trade Practices. Subtitle 15 is not included in the new Code; therefore, the tie-in section is going to expire September 30. Ms. Mitchell said that this was not true. Material that has not been revised will remain as it is until the revision. Senator Madden added that these revisions contain no substantive changes and only clarifies existing language.

Mr. Ranier asked Ms. Bowman what she felt on this issue of tie-in policies. She said she is still trying to sort out the issue. Ms. Gilson thinks we should look at whether a product, which is designed to be sold to only one group over another group, could not be in the consumer's best interest. Mr. Murphy said the Mortician's Board has no opinion on this issue. Since morticians have 100% escrow, they would find it very hard to pay a commission. He does not see how the tie-in policies would be feasible for them. Mr. Ranier asked for a motion on the issue. Ms. Suskin moved that the prohibition against tie-ins be continued for funeral homes and cemeteries. The motion passed unanimously.

The consumer members of the Board of Morticians addressed the Task Force. Mr. Charles M. Boling was appointed to the Board last year and Ms. Odessa Dorkins is serving her fifth year. Mr. Ranier told them that one of the questions the Task Force was considering was whether the make-up of the Board of Morticians should be revised to include more consumer members. The Chairman explained that the Task Force had been told that the members were very active. Mr. Ranier asked if they felt their voice on behalf of the consumer was heard.

Mr. Boling said that the consumer members' voices are heard very well. Mr. Boling reported that he asks a lot of questions and feels that his concerns are answered. There is also legal advice available when needed. Ms. Dorkins said the consumer members also serve on Committees and she chairs one committee. They have a very good team and that is what it takes.

Mr. Ranier asked Mr. Boling and Ms. Dorkins if they had an opinion on whether the composition of the Board should have more consumer members. Ms. Dorkins said she feels consumers are properly represented. Mr. Boling said in practicality the Board needs the expertise of the morticians and also the viewpoint the consumer members give. Ms. Dorkins said that whenever a complaint comes in the full Board discusses it.

Mr. Brown asked what kind of complaints they receive. Ms. Dorkins said that there was one case where the mortician did not want to handle an AIDS victim. Mr. Boling said they receive complaints about advertising and consumers not receiving price lists. Mr. Goodman asked in what way the consumer members thought the Board could be strengthened. Mr. Boling said that in his opinion that was what the Task Force was to decide. When asked about apprentice program, Mr. Boling said he has strong feelings about the apprentice program which the Board is currently revising this program.

Mr. Jenkins added that one of the main functions of the apprenticeship board is to interview apprentices before they start and all members of the Board are welcome to attend even if they are

not on the apprentice committee. At these meetings, any member can ask a question. The Board has never ignored a situation when presented and have always come to a solution.

Ms. Bowman asked if there is a sufficient range of remedies available. Mr. Boling feels comfortable with the remedies available to the Board. Mr. Boling did say that the Board has to share investigators with other Boards which limits their investigations. Mr. Murphy said the Board has the money to hire investigators but can't touch it because they have to do what the Department of Health and Mental Hygiene (DHMH) tells them to do with it. The Board's legislative agenda is to try to free up those funds. Mr. Murphy said that if they could have one full-time investigator and one contractual inspector to do once a year inspections, that would free up the investigator to work on complaints quicker. At the present time, the one investigator has to do it all. Mr. Murphy said they are just going to try to get autonomy to mean autonomy. The Board cannot bring on new people, give a merit raise, or get an inspector without permission from DHMH. They are going to meet with the four chairs on the Senate side and the 6 on the House side of the General Assembly to try to change this situation.

Mr. Ranier asked for a motion for the composition of the Board of Morticians. Mr. Murphy moved that it remain the same. The motion passed unanimously.

Mr. Ranier stated that he understood that the Board is going to change the apprenticeship program. Mr. Murphy reported that a person will have to complete two-thirds of his education before becoming an apprentice. Licenses will not be renewed as easily as they are now. Ms. Bowman asked if the Board could guarantee apprenticeships for everyone. Mr. Murphy answered no, and added that this would be a free market issue. Delegate Morhaim asked if there would be a finite number of years that someone could serve as an apprentice. Mr. Murphy said that the Board was going to limit the number of extensions. Delegate Morhaim asked the Board to consider requiring an apprentice to finish his education within a specified period of time. Mr. Murphy said that, after discussion with practitioners and Catonsville Community College, the Board decided to allow a person to become eligible for an apprenticeship after two-thirds of his education was completed, rather than requiring graduation first. Delegate Morhaim indicated that he would like to hear more on this issue. Mr. Goodman said he would still like to hear from Catonsville at the next meeting. Mr. Ranier reminded the members that the last meeting will be to go over the final report. Mr. Murphy said he will bring his legislative package to the next meeting.

Mr. Cherry of the Memorial Society of Maryland & Environs was asked by Mr. Ranier what steps, if any, should be taken to promote not-for-profit burial societies. Mr. Cherry said he was thinking in terms of what is best for the consumer. He asserted that it would be confusing for consumers to have to deal with different boards when they have a problem. The Memorial Society does do comparative pricing for consumers which consumers can't do, and gives people information about organ transplantation and cremation. They let people know the cost of cremation, and inform them that cremation does not require cosmetic preparation or embalming. Mr. Ranier said that he feels what Mr. Cherry is saying is that the more the consumer knows about what is available, the better off he is.

Mr. Doyle addressed the Task Force on the issue of removing the law banning more incorporations of funeral homes in Maryland. Mr. Doyle thinks a change in the incorporation law is a bad idea and is not in the interest of consumers of this state. As the law now stands, there are 59 corporate licenses or INCs in existence. Anyone can buy one if he can come up with the money. The conglomerates (SCI, Loewen, and Stewart) own 16 of those licenses. While no other INCs or corporate charters can be issued under the current law, there is no limit to the number of professional association type organizations that can be formed.

Mr. Doyle said the push to change the incorporation law is coming from the big conglomerates because they would benefit by more licenses. The independent owners do not support this change. There may be some that wish to open a funeral home using a corporation, but overwhelmingly the conglomerates are the ones that want this changed. The issue is whether you want to allow these conglomerates unlimited access to the market. The theory proponents argue is that by doing so, the market may become more competitive. However, the facts show exactly the opposite. Prices will rise for the consumer, as they have wherever the conglomerates have gone.

On November 12 of this year, there was an article in the Wall Street Journal about conglomerates moving into Prince Edward Island in Canada and the independents reacted by upping their prices. The price for a funeral rose by several hundred dollars. A representative from Loewen said that they do not try to be the lowest priced operator in town. A survey of prices by the National Association of Funeral Directors showed that conglomerates charge more than independents. There is a lot of information to support this. There was an article in the New York Times saying that in almost all cases there was a substantial difference in prices charged by the conglomerates over prices charged by independent funeral operators. Mr. Doyle argued that the efficiencies of service that conglomerates can offer do not benefit the consumer because earnings are king. There is an antitrust investigation being conducted by the Attorney General of New York involving SCI. Loewen was involved in a suit in Mississippi. The conglomerates are intent on becoming larger. If this kind of consolidation were to occur, it would be analogous to Pepsi and Coke merging.

Mr. Doyle strongly asserted that the incorporation law should remain as it is. It does not prohibit any licensee from entering the market. The corporations can enter the market if someone wishes to purchase one. It is important to keep some kind of check on the big conglomerates. It makes a reasonable check on what serves the interest of the consumer. This statute has been on the books for many years. People who want this changed should be required to prove how a change will benefit the consumer. There is now a reasonable balance between the rights of independents to survive, and conglomerates to operate.

Delegate Morhaim said he is still trying to figure how creating more corporate licenses opens up the market to the conglomerates. Possibly the only entities that can afford to buy the existing corporate licenses now are the large conglomerates. Delegate Morhaim said he is still just trying to understand this issue. Mr. Doyle said that if you change the law, for all practical purposes, the only people who are going to be interested in coming in will be the conglomerates. The independents operate under PA's quite effectively. Delegate Morhaim said that he thinks that the conglomerates would not want to have more corporate licenses available because now they are the

only ones who can afford them. Mr. Ranier asked if a conglomerate wanting to come into Maryland now and operate a funeral home must buy an existing corporate license. Mr. Doyle said yes.

Ms. Bowman asked Mr. Brown what he thought about opening the State up to more corporate licenses. Mr. Brown said he feels that, under current law, there is not a level playing field. He would like to have a funeral home but can't. The Task Force wants him to trust 100% as funeral homes do, but he is not allowed to have a funeral home. Ms. Suskin said that she would like to see it opened up, but wants to see a caveat that only so many can be owned by large corporations. Mr. Ranier said that could be a restraint of trade. Mr. Doyle said he has thought about this issue, but has not been able to see how anything would help the consumer in this.

Sarah Rex was asked by Ms. Bowman how the members of the Freestate Cemetery and Funeral Association feel about enabling more corporations to own funeral homes. Ms. Rex said her Board voted to support Mr. Cody's proposal to open Maryland up to more corporations. The Association determined that the law is antiquated and restricts industry. She stated that there may be other sound businessmen that want to form a corporation and operate a funeral home in the State.

Mr. Goodman asked Mr. Murphy what disciplinary actions the Morticians Board can take against the corporations. Mr. Murphy answered that the Board can take them to circuit court and pull their establishment permit. Mr. Ranier clarified that the corporation would still exist, but the establishment permit for the particular funeral home would be eliminated. Mr. Brown said that some funeral homes that have an INC or a corporate license are bought by a large corporation, shut down, and the corporate license is then used in a larger area, like Baltimore. This kind of action often causes a small or rural area to lose funeral home services. Mr. Doyle argued that monopoly and price issues are not being considered in the discussions of this issue.

Delegate Morhaim said that in Prince Edward Island, Canada, a co-op was formed in answer to the high prices of the conglomerates. Mr. Murphy said that a Moslem mosque wanted to form a co-op and the Board was asked to work with them to make sure they adhered to the law. Mr. Markowski asked if a nonprofit group could open up a funeral home. Mr. Murphy does not know and does not know why anyone would want to. Mr. Markowski said that death care used to be something that religious groups handled, whereas now it is becoming a one-stop shopping experience at a profit making entity. In Mr. Markowski's area (a Catholic cemetery), they may have to offer the one-stop shopping experience to stay in business. Also if a person makes funeral arrangements, and the person asks for a reference to a cemetery, the funeral home belonging to a conglomerate will refer to a cemetery belonging to the same conglomerate. Mr. Murphy said that the Archdiocese of Denver operates funeral homes. Mr. Markowski said that is because Colorado has different laws than Maryland. Mr. Markowski said it seems odd to him that there are no nonprofit funeral homes to put the brakes on prices. Mr. Goodman wants to see some kind of regulatory structure to protect the consumer if the law is changed to allow more corporate licenses.

Ms. Bowman asked if the name of SCI (the parent corporation of his funeral home) was on the contract that Mr. Murphy uses at his funeral home. He answered no. Ms. Bowman asked if perhaps that should have to be openly disclosed. Ms. Suskin said that if she knew who owned the

funeral home when comparison shopping, she would not look into four establishments owned by the same corporation. Mr. Markowski said he thinks there should be disclosure when making a referral to a cemetery if you have a financial interest.

Mr. Ranier asked if there was any further discussion of whether the corporate law should be changed. Mr. Brown moved that Maryland law concerning corporations be changed so Maryland can issue more corporate licenses or INCs. Mr. Goodman asked that we recommend the corporate license issue for further study and wanted that to be a counter motion for the Task Force. Delegate Morhaim said that we should direct this issue for further study, because maybe some of us think it should be opened up but would like to see safeguards. Ms. Bowman said it would be interesting to consult with the antitrust division to see what kind of protections could legally be used. Delegate Morhaim said that Mr. Markowski has a good point in asking how difficult should we make it if a religious group wants to open a funeral home. Mr. Ranier said the study of this issue may require another Task Force. Ms. Suskin asked whether, if we recommend this issue for further study, we could also list all our concerns and subtopics. Delegate Morhaim would like to see this studied between now and the next meeting. Delegate Muse said if the Task Force sends this issue to be studied, they are getting nowhere.

Mr. Ranier said the Task Force could debate this until tomorrow morning and not get any closer. Mr. Markowski said that when this Task Force was convened, this was one of the major issues to be handled. He thinks the Task Force should say either it will be opened up or not. The Task Force voted on Mr. Goodman's motion to recommend the issue of opening up the State to more corporate licenses be studied further and the motion passed. Mr. Brown's motion to change the corporate law to allow more corporate licenses was not put to a vote.

Mr. Harry Witzke addressed the Task Force on the issue of whether non-licensed people should be allowed to perform certain functions under the delegation of the funeral director. He said that, for the record, he did not sell his funeral home, although he was asked to sell by one of the corporate groups. He did have a mortician's license, but it was taken away because it was said that he abetted the practice of mortuary science without a license. In Mr. Witzke's opinion, the State should go back to two licenses, one for the embalmer, and one for the director who is a businessman. He asked why a licensed mortician is needed to perform the business functions. Mr. Witzke argued that this requirement raises the cost of the services at a funeral home.

For a price list, Mr. Witzke advocated including not only the price of the casket, but information regarding what the casket is made of and who made it. He stated that, if business people in the death-care industry do not change, there will be more cremations and the business will not be there.

Mr. Ranier said that in reading over Mr. Witzke's prepared remarks, it says that a licensed person should do the embalming while an unlicensed person should be able to accompany a body to a cemetery. Mr. Brown asked if this requirement to accompany a body was by law or regulation. Mr. Murphy said it was by regulation.

Mr. Murphy strongly disagreed with Mr. Witzke's assertion that an unlicensed person could accompany a body to a cemetery. Mr. Murphy said that there would be no protection for the consumer when something goes wrong if the licensed mortician is not there. Mr. Witzke said that the family should have the choice of whether or not a licensed mortician will go with the body. Mr. Murphy said that there are 3 or 4 people who work on a funeral who are not licensed morticians, but that a licensed person is needed to make sure everything goes well. Delegate Morhaim asked if there is a separate charge for a licensed person to accompany the body. Mr. Murphy said that there is not. Delegate Morhaim asked if it would be possible to have a designee perform this function. Mr. Murphy said no, because there is no one to go to if there is a problem. Delegate Morhaim said the licensee is responsible.

Mr. Canapp said he resented being told that the family does not deserve being served by a licensed professional. Ms. Bowman asked if there are people who are licensed to embalm who may be good at that and not be good people persons. She wondered if the funeral home should be allowed to hire a people person, who is a nonlicensee, to accompany the body. Mr. Murphy said that they are worried about the whole picture. The family has paid a lot of money and should have a licensed director on call. Mr. Murphy said that the funeral directors are trying to upgrade the profession, they have come a long way and do not want to go backward.

Ms. Rex said we are losing sight of the fact that many of these responsibilities are currently delegated to non-licensees now. As a cemeterian, she wants to see a licensee come through that gate in case anything goes wrong. Mr. Jenkins said that if this provision is wiped out, there would be no incentive to hire apprentices or licensed people. Mr. Ranier said that he has strong doubts that any cost-saving would result. Mr. Jenkins said that it would benefit the owner if he could hire non-licensees because it would cost less. Licensed morticians are hired because they are needed.

Mr. Harry Witzke repeated that the most important person in the funeral home is the embalmer which must be a licensee. The other is a merchandiser. Delegate Morhaim said that a person can go out and buy a casket from any casket seller and asked why a funeral home director should not be able to hire a non-licensed person to sell caskets. He doesn't understand why they wouldn't want to have that option. Mr. Canapp said that you want a qualified person when you make arrangements.

Mr. Canapp asked if the motion that was previously passed requiring a price list to be given to anyone who requested it affected both preneed and at-need. When it was discovered that it only included preneed, Mr. Canapp moved that at-need be included in the earlier motion and it passed unanimously.

Mr. Murphy made a motion that existing law remain as it is on the issue of licensees and non-licensees functions in the funeral home. The motion passed with Ms. Donaldson, Ms. Bowman, Ms. Gilson, Mr. Porter, Mr. Goodman, Mr. Ranier, Mr. Markowski, Mr. Canapp, Mr. Murphy, Mr. Jenkins and Ms. Rex voting in the affirmative, Delegate Morhaim, Ms. Sheila Stewart-Duncan and Mr. Brown voting in the negative, and Senator Hafer and Ms. Suskin abstaining.

The next issue for discussion was whether or not the present practice of requiring the family to bear the expense of transporting a body back from an autopsy should be continued. Ms. Gilson said she felt the Task Force should take a moral position on the issue. Ms. Suskin said she thinks the charge for transporting a body is obscene and very inflated. Ms. Bowman expressed the opinion that the State could absorb this cost. It was suggested that funeral homes could absorb this cost as a charitable deed. Mr. Canapp said that funeral homes do charitable work now. Senator Hafer said that, if an autopsy is performed, it has to be done in Baltimore because the state already pays doctors there to do that. If an autopsy has to be done on the weekend, the cost of transporting the body from Baltimore to Western Maryland or the Eastern Shore is substantial.

Mr. Porter moved that the present practice of requiring the family of homicide victims to bear the expense for the return of the body from an autopsy performed for the purpose of evidence gathering be stopped. The motion passed.

Mr. Ranier raised the question of whether additional requirements are needed for proper reinterment of remains discovered during the development of property and for the preservation of historic cemeteries. In the absence of Mr. Trader or someone who is an expert on the subject, the Task Force tabled this issue until the next meeting.

Mr. Ranier made a motion that the corporate owner's name be on a price list that is given to the consumer. The motion passed unanimously, with Ms. Rex abstaining.

Mr. Goodman moved that the Task Force make a recommendation that the Director of the Office of Cemetery Oversight, in conjunction with Catonsville Community College, consider setting up a Cemetery Management certificate program. The motion was not taken to a vote.

Mr. Markowski moved that funeral homes who refer customers to cemeteries, as well as cemeteries who refer customers to funeral homes, be required to inform the client when they have a vested interest in the entity to which they are referring the consumer. The motion passed unanimously, with Mr. Murphy abstaining.

Mr. Markowski asked if anybody could accept cremains without being a cemetery. There was a brief discussion of this issue and it was decided to leave further discussion of this issue until the next meeting.

Mr. Ranier adjourned the meeting at 9:40 p.m.

TASK FORCE TO EXAMINE THE STATE'S CEMETERY AND FUNERAL INDUSTRY

Motions from December 2, 1996 Meeting

1. If a consumer asks for a price list from someone selling preneed death care merchandise, the consumer must be given a price list to retain. The motion passed unanimously.
2. Delete all references to interest in Title 5. The motion failed.
3. Retain Title 5 as it is, with respect to the issue of imposing interest on installment payments of a preneed purchase. The motion passed by a majority vote.
4. Retain the present prohibition against selling tie-in insurance policies to finance preneed arrangements. The motion passed unanimously.
5. Retain the current composition of members of the Board of Morticians. The motion passed unanimously.
6. Change current Maryland law to allow more corporate licenses for the operation of a funeral home. The motion was not taken to a vote.
7. Recommend for further study the issue of whether Maryland law should be changed to allow more corporate licenses for the operation of a funeral home.
8. A price list that a consumer can retain must be given to a person requesting a price list for at-need purchases of death-care products. The motion passed.
9. Retain the current law regarding delegation of duties to non-licensees in funeral homes. The motion passed.
10. Discontinue the practice of requiring the family of a homicide victim to pay for transporting the body back from an autopsy (which has been done for the purpose of evidence gathering). The motion passed.
11. A corporate owner's name will be required on the price list given to the consumer. This includes the parent company that owns the funeral home. The motion passed.
12. Recommend that the Director of Cemetery Oversight, in conjunction with Catonsville Community College, consider establishing a Cemetery Management certificate program. The motion was not taken to a vote.

TASK FORCE TO EXAMINE THE STATE'S CEMETERY AND FUNERAL INDUSTRY

Minutes

December 16, 1996

Members Present

Edward Ranier, Chairman
Senator John Hafer
Senator Dan Morhaim
Harriet Suskin
Lisa Maddux
Michael Lachance
Margot Gilison
Susan Elson
Frank Porter
David Goodman

Frank Markowski
Earl Canapp
Tom Murphy
Sheila Stewart-Duncan
John Smialek
Charles Brown
Sara Rex
Joe Jenkins
Rebecca Bowman
Judy Donaldson

The meeting was called to order by the Chairman, Edward Ranier at 6:10 p.m. Mr. Ranier outlined the order of the meeting: (1) considering the remaining issues before the Task Force; and (2) reviewing the draft report, page by page. Before beginning, the chairman commented on an unsigned fax sent to the Task Force members. The chairman refused to respond to the fax except to say that he is not lobbyist to the Funeral Directors Association, Mr. Doyle is.

The Chairman announced that the Task Force would deal first with two remaining issues: (1) the preservation of historic cemeteries; and (2) the apprenticeship program at Catonsville Community College. In addition, he recognized that Frank Markowski may have additional motions or comments and will allow him to make those comments.

James Trader, President of the Maryland Association to Protect Maryland Burial Sites, spoke to the Task Force concerning the preservation of cemeteries. He reported that most land use plans do not say anything about burial sites. In his opinion, the location and disposition of burial sites should be part of any land use plans. Mr. Trader is concerned that there are no provisions in Maryland law regarding abandoned cemeteries, what happens when human remains are accidentally discovered, how the remains should be treated or removed if necessary, and reinterred in a permanent cemetery.

Mr. Trader related an incident where a woman planting flowers dug up human remains. No government entity would take charge of the remains. The only ordinance that deals with the accidental discovery of human remains is in Howard County. Mr. Trader wants cemeteries to be listed alphabetically and have their locations included. He thinks this responsibility should be with

the coroner's office and there should be registration of burial sites. Burial sites are presently registered with the Department of Assessments and Taxation, but registration is not a requirement.

Mr. Goodman asked what other states offer programs for overseeing these burial sites. Mr. Trader does not know, although other states have written his association to see what they are trying to do. Mr. Brown asked Mr. Trader if he had given thought to how to avoid having more abandoned cemeteries. Mr. Trader answered that his aim is to have a Burial Site Preservation Committee in each county that will preserve the physical cemetery itself. Mr. Brown asked if he thought the State should provide the money to preserve them. Mr. Trader said no, there would be private money solicited to take care of the cemeteries (thinks this is an educational thing that schools could be part of also). Mr. Brown said they are having a terrible problem in Baltimore with abandoned cemeteries not being taken care of. Mr. Trader said there have been some private trusts created to take care of some cemeteries.

Esther Doyle Read, a professional archeologist with a master's degree and 18 years experience in her field, spoke to the Task Force. She is a member of the Maryland Council for Archeology. The Council supports Mr. Trader's position that abandoned cemeteries should be preserved in place where it is feasible to do so. However, the Council realizes that, in today's world of rapid development, it is not always possible for cemeteries to be restored in place. The Council does not want to see bulldozing or inappropriate methods used in these cemeteries. Ms. Read recently participated in an archeological dig in Baltimore where Johns Hopkins was building an oncology center. There were 230 grave sites in two cemeteries on the property. The bodies were reinterred elsewhere in Baltimore. From an archeological point of view, the two cemeteries were interesting to study as one cemetery was a potter's field and the other an Episcopal cemetery for an affluent group of people. Some of the bodies were kept for archeological study. When the archeologists are finished with their study, the bodies will be reinterred.

Ms. Read asked that the Task Force not make any recommendations that will limit the ability of archeologists to use bodies discovered in this way for scientific study. They made every effort to locate descendants of the people buried, but were not always able to do so. The development of land where there are old cemeteries will happen more and more, especially in Baltimore City.

Ms. Rex asked how you reconcile the desire to study with the intent of the families of those buried that their remains not be disturbed. Ms. Read said they try to put names with the people who were buried there by looking at old records which are mostly in churches. If they can find the families of the deceased, they will ask the family for permission to study the body.

Delegate Morhaim asked if this issue could be added to the list of issues for the Office of Cemetery Oversight to handle. His request was put in the form of a motion and passed unanimously.

Mr. Murphy introduced Ms. Joyce Torchinsky, a Mortuary Science instructor from Catonsville Community College. She began by saying that the apprenticeship program should more appropriately be called an internship. The apprenticeship helps the individual get hands-on experience and a frame of reference. Ms. Torchinsky said the students have to make themselves

presentable, be well-spoken, and go around with their resumes to get an apprenticeship. There are plenty of apprenticeships available and students are successful in getting apprenticeship jobs. The college used to place them, but they have found that most students are able to get jobs on their own. The apprenticeship requires 2,000 hours, 25 assists at funerals and 25 embalmings. Apprenticeships allow the students to become professionals. The college agreed with the Board of Mortician's decision to adjust the apprenticeship program so that it begins when a student is 2/3rds of the way through their Mortuary Science program. Many students in the Mortuary Science program enter with a bachelor's degree or an AA degree and are very close to the 2/3rds credit that they need to be able to begin an apprenticeship. Ms. Torchinsky said Catonsville Community College is very proud of their students.

Delegate Morhaim asked Ms. Torchinsky how many students they have per year. She said about 130 have declared mortuary science as their major. When Delegate Morhaim asked how many graduate per year, Ms. Torchinsky said it would be difficult to say specifically as they graduate classes several times a year. She then said that about 60 or so graduate a year and probably 55 of them stay in Maryland. Students in the mortuary science program must take the same core work as any other degree-seeking student at the college. Ms. Torchinsky was asked how many credits the mortuary science student takes in general studies and how many in mortuary science. The answer was that around 60 of the credits are for the core work and 40 for mortuary science. Ms. Torchinsky left a booklet with the Task Force that gives information about the program.

Delegate Morhaim asked why other programs that deal with very sophisticated matters, such as paramedics and x-ray technicians, can complete their training in two years without an additional apprenticeship, but the mortuary science students have the two-year school requirement plus the apprenticeship. Ms. Torchinsky said that mortuary science is an entirely different animal and until others can walk in the shoes of a mortician, they do not know what is required of them. Many people can deal with the living, but not with the dead. Del Morhaim said that he realizes it is true that we can't walk in other people's shoes, but we try to extrapolate from other experiences and then make the best judgments we can. He said that he has a hard time understanding why the mortuary science students cannot get their practical experience within the confines of two years of education while other courses teaching very sophisticated technical skills can achieve that.

Delegate Morhaim asked her to explain how long the program allows a student to take to complete his/her apprenticeship. Mr. Murphy answered that, in their proposal, a student will be allowed only two renewals, requiring the apprenticeship to be completed within three years. This change is being made because some people have abused the system in the past.

Ms. Suskin asked Ms. Torchinsky to explain specifically why the students need an apprenticeship. Ms. Torchinsky said that students have 22 embalmings in the embalming classroom with 5 students to a table for one cadaver. Ms. Suskin asked Ms. Torchinsky what she sees as problems with the program. Ms. Torchinsky answered that she feels they are addressing any problems now.

Ms. Torchinsky stated that the instructors watch students who are failing or can't keep an apprenticeship program and talk to them. She has files on every student. Mr. Brown asked if the student enrolls in the program for the coming semester, and if he passes all the courses and goes full-time, how long will it take him to complete the courses at Catonsville. She said it took her two years and a summer and she already had a Bachelor's degree.

Ms. Maddux asked Ms. Torchinsky if the school has a supervisory role over the apprenticeships of the students in order to make evaluations. Ms. Torchinsky said communication is up to the Board of Morticians. Ms. Maddux then asked Mr. Murphy if the Board of Morticians does evaluations. Mr. Murphy said that is up to the sponsor.

Delegate Morhaim asked why some of the other programs include their clinical training within the confines of the two-year program and the mortuary science program does not. Ms. Torchinsky said that was an interesting question. She explained that the school does not run a funeral home. Delegate Morhaim countered that other colleges do not run hospitals, yet the practical training is done during the two-year curriculum. Ms. Torchinsky said she doesn't know where Delegate Morhaim is coming from and asked him if he had a specific proposal. Mr. Ranier said it sounds like Delegate Morhaim is asking why the apprenticeship cannot be rolled into the two-year school program. Mr. Ranier asked if hospitals are under contract to the schools and if the hospitals pay the students for their clinical work. Delegate Morhaim said that he does not think they are paid. Mr. Ranier said the hospital is then getting the use of the students free. Mr. Ranier said the flip side is that the apprentices are paid.

Mr. Canapp said that the majority of apprentices do their course work simultaneously. The difference is that they are being paid for the apprenticeship work. Mr. Porter asked if the students get credit for their apprenticeships. Ms. Torchinsky said no, the apprenticeship period is required for licensure by the State, not the college. When asked what changes she would like to see in the mortuary science program, Ms. Torchinsky said that she would like to see more instructors added. An instructor has to be a funeral director with a master's degree and there are not many who fit those requirements. Also, there is not funding for more teachers.

Ms. Bowman asked Mr. Murphy if there was any kind of evaluation form that has to be filled out on an apprentice. He answered no, but the 2,000 hours have to be documented. The Board knows who the sponsors are, their case volume, and how much experience the apprentice will be able to get with that particular sponsor. Mr. Murphy said they sometimes ask for time cards to see how much the apprentices are working. Ms. Torchinsky said that if apprentices do not do their work, their co-workers will see that they are booted out. Ms. Bowman said the potential exists for a parent to sign off on their own child's time cards and abuse the system. Ms. Torchinsky said in her experience, students whose parents are in the industry tend to work harder to prove that they are capable.

Mr. Brown asked how long it takes to do an embalming. Mr. Murphy said an embalming takes about 3 hours on average. Mr. Brown asked if 2,000 hours was maybe too much to require. Ms. Torchinsky said that if it were up to her, there would be more hours required than 2,000.

Ms. Torchinsky said they have a section at the school that they call "funerary nightmares" where unusual incidents are discussed that have occurred at a funeral.

Mr. Ranier asked if her school had a job placement service. Ms. Torchinsky said they have a board where they post jobs. If an employer asks them, they might tell them about somebody who could be available (with disclaimers of any responsibility). Mr. Ranier asked if there was any mechanism to place students if they can't get a job. She said that they will help someone (tell them to press their suit, refresh their resume, etc.) to help them get a job. Ms. Torchinsky said the bottom line is that the college will help the students help themselves. Mr. Ranier asked if there was anyone who couldn't be placed. She said no, not over the past 3 and a half or four years.

Ms. Rex asked Mr. Murphy if, in his opinion, a person could pass the mortuary exam without having done the apprenticeship. Mr. Murphy said they could possibly have passed the written part of the old exam but not the new one. Ms. Stewart-Duncan asked if Catonsville Community College is the only school in the state offering Mortuary Science work and if their program has been compared to those in other states. Ms. Torchinsky said Catonsville has the only program in the State. The program has been compared to those in other states and she is very proud of their program. Mr. Jenkins said Maryland's apprenticeship program ranks in the top 5 of 47 states that belong to the Conference.

Mr. Brown asked Mr. Murphy what the requirements would be if a licensed mortician came from another state and wanted to practice in Maryland. Mr. Murphy answered that an applicant would have to have 5 years of consecutive licensure in another state and also serve 1,000 hours of an apprenticeship before they could get a Maryland license.

Mr. Goodman asked Ms. Torchinsky how many of Catonsville's students were from out-of-state. Mr. Torchinsky replied that presently about 10 or 11 Mortuary Science students are from another state. Mr. Goodman asked how many are part-time. Ms. Torchinsky replied most of them are part-time. Since most students are part-time, Mr. Goodman asked how long it usually takes for them to get their degree. Ms. Torchinsky explained that there are two kinds of students who take longer: those who prolong the courses or can't pass the courses, and those who can only take a few at a time. A maximum of five years is allowed to finish the course work.

Mr. Goodman asked if it was true that there is no measure of the apprenticeship by anyone other than the 25 hours of embalming and 25 funeral assists. Ms. Torchinsky said that some employers call and report that the students are not doing well and the instructors at the college will talk to those students. Mr. Goodman said that he thinks what Delegate Morhaim was talking about was that there was a much greater supervision in other professions (paramedic, x-ray technician, etc.) of the student. Ms. Torchinsky said that, as an instructor, she can see what experience is teaching them. There are some students who are not apprentices and have no frame of reference, so the instructor will stop and talk about what the student needs to know.

Mr. Goodman asked how the school is funded. Catonsville Community College gets money from the State and Baltimore County - no funds come from the Board of Morticians. If they had

more funding for faculty, they could have more classes. They also need 66 cadavers per semester in order to have an embalming class. They do not have enough for more than one embalming class each semester. Delegate Morhaim said the apprenticeship program had value, but again asked why it could not be part of the college curriculum. Mr. Jenkins said that the funeral industry is moving toward more difficult standards for their industry, but feels the Task Force is asking for a relaxation of those standards. Senator Hafer said there are four-year courses for mortuary science in some other states and they incorporate the apprenticeship program in them.

Delegate Morhaim asked Mr. Murphy about the Board of Mortician's legislative proposal. Mr. Murphy said that the first phase is to clarify Senate Bill 509, the second is to try to implement the changes Ms. Torchinsky mentioned in the apprenticeship program, and the third will be to implement audits on preneed sales.

The Task Force then considered the issue of illegal recycling of graves and burial of two unrelated bodies in the same site. Mr. Ranier asked Mr. Porter if he would like to make any motions on these issues. Mr. Porter moved that a study be done on the illegal recycling of graves by the Director of Cemetery Oversight and in conjunction with the advisory council. Mr. Goodman asked that we add an amendment to the motion requiring the Director make recommendations to the Legislature. The motion passed.

Mr. Porter then moved that the Director also study the issue of burying unrelated bodies in the same grave site. All voted yes, except Ms. Rex. Ms. Rex said she would want what is legal and illegal to be decided by the Director of Cemetery Oversight. Mr. Ranier asked to have the Director study the illegal burial of unrelated persons in the same grave. Mr. Goodman amended the motion to require that the study be done within one year and a report made to the Legislature. All approved this amendment.

Mr. Canapp wanted to make an amendment to the minutes of the December 2 meeting. On page 8, Mr. Canapp said that it is actually 22 "INCs" are owned by publicly-held corporations, instead of 16. Sara Rex wanted to make a change to the minutes from the November meeting. When she referred to the "Rule of 78" she should have said "actuarial study". With these changes, the minutes were approved.

The Task Force reviewed the draft of the Final Report that will be submitted to the Governor and the Legislature. Mr. Ranier asked members to look at the report page by page and make any comments or corrections.

On page 1, Ms. Elson wanted the report to say "funeral and cemetery merchandise", instead of funeral only. Mr. Markowski asked that the report stipulate the list of mandates written in House Bill 304. Mr. Ranier said the bill would be attached. Ms. Rex wanted to eliminate some of the language referring to the reason the Task Force was created. Ms. Mitchell said that the language was a part of the Legislative history. Ms. Rex still objected. Mr. Porter and Mr. Ranier said it was fair to include that language. Delegate Morhaim said the language came from complaints. Ms. Bowman said that the legislation setting up the Task Force was responsive to written complaints.

legislators had received, testimony consumers made before legislative groups, complaints counties had received, and other complaint history. The word "cemetery" will be struck from the fourth line of the first page of the report.

Ms. Rex had another objection to the first page. She wanted to add the statement made by Mr. Frank Haswell (then a Task Force member) at the first meeting asking the Task Force for a parallel agenda, similar to that planned for the cemetery industry, to study the funeral industry. Mr. Ranier said that since the minutes of the meeting would be attached to the final report, the wording of the report should remain as it is. Ms. Rex made a motion that Mr. Haswell's statement be included. The motion failed.

On page 2, Ms. Bowman suggested language to clarify this paragraph: "The Task Force has determined that, among the many death-care industries in the state, including the funeral industry, cemetery industry, monument industry, and other death-care providers, the cemetery industry is the one most in need of regulation". A motion to include this language passed.

Ms. Rex said the third sentence was incorrect because the cemetery industry was under the regulatory authority of the Secretary of State's Office. Mr. Ranier agreed that some clarification should be made regarding the limited regulatory authority of the Secretary of State's office.

On page 3, on the last line of the opening paragraph, Ms. Bowman added "beyond mediation" There was no objection to the sentence.

On page 4, Ms. Donaldson wanted to either take out the reference to the Department of Labor, Licensing, and Regulation or say financial industry instead of insurance industry. There was no objection.

On page 5, Mr. Porter suggested rearranging the wording of the sentences in the third paragraph regarding the make-up of the advisory counsel.

Ms. Suskin said that it was her understanding that the Task Force had voted to require the advisory board to meet at least twice year. The minutes reflected that requiring more frequent meetings had been discussed, but not changed from once a year.

Ms. Bowman said that she would like to amend the very first sentence after advisory council to say that the consumer members of the Task Force were particularly interested in ensuring that the interest of consumers be fully and fairly represented in the regulations adopted by the Director.

On page 6, Ms. Elson wanted language added here to reflect the group's decision to add that the right of cancellation and refund be conspicuously stated on a contract for preneed goods and services. Mr. Brown asked if the right of cancellation wasn't already there by law. Ms. Bowman said a three-day right of cancellation applies only to door-to-door salesman. Mr. Porter suggested that the right of cancellation statement be inserted after monument companies.

On page 7, under the "Penalty" provision, it was suggested that the report clearly specify that if a restraining order is issued prohibiting the operation of a cemetery, the maintenance of that cemetery will continue. After some discussion, it was noted that the report discusses receivership.

On page 8, Mr. Porter pointed out a clerical error where the first sentence on the page should be divided. In the next sentence "at" should be "to". Also "Board" and "Office" should be completely identified.

In the last sentence of the first paragraph, the word "feasibility" will be substituted for "possibility". Mr. Lachance asked if any members objected to substituting "recommend" for "study" or "examine" in the last sentence of the first paragraph.

Mr. Goodman also was concerned that the language was not strong enough to ensure that the Board and Authority will decide who will handle a consumer complaint and make the correct disclosure to the consumer.

On page 9, in the second paragraph, Ms. Rex said the first sentence in the second paragraph is stated incorrectly. The Free State Cemetery Association argued that 55% was more than sufficient. In the second sentence of the second paragraph, it should be reflected that the Free State Cemetery Association recommended that trusting requirements remain the same as they are under current law.

Ms. Rex wanted additional language added to the second paragraph on page 9 to reflect other reasons the Cemetery Association does not want the trusting requirement raised. The Task Force will leave the language as it is.

Where the word "suggest" appears in the report, it will be changed to "recommend".

On page 10, the Report will add language requiring that all money held in trust for preneed purchases be invested in federally insured institutions. Mr. Murphy wanted to change the last sentence of the second full paragraph to say that while the Maryland State Board of Morticians cannot require something different from state law, they will encourage their licensees to continue to trust 100% of money from preneed purchases.

Under "Reasonable Costs", there was a discussion among Task Force members as to what had been decided by the Task Force as a percentage a seller could keep when a preneed contract was canceled. The last recommendation on page 17 of the Report defines that percentage.

Ms. Suskin wanted to revisit the issue of recommending that Maryland law be changed to allow more incorporations of funeral homes. She said several Task Force members were under the impression that it would be reconsidered at this meeting. A motion was made to reopen the issue and the vote was in the affirmative.

One of the issues the Task Force considered was whether prices for funerals would rise if more corporations to own funeral homes could be formed in Maryland. Mr. Goodman had spoken

to regulators in several other states and received mixed information of prices under different structures. Articles that have appeared recently in the media were brought up by some members to support the position that prices would rise if Maryland law was changed in this area. Mr. Brown said that prices could also go down. Mr. Ranier was going to allow representatives of opposing positions attending the meeting to speak on the issue, but some Task Force members felt this would be inappropriate as a motion on the incorporation issue was before the Task Force. Mr. Ranier agreed and discussion on the issue continued only by Task Force members.

Mr. Goodman said that if members voted to change the incorporation law, he wanted the Task Force to give some recommendations of regulations that could help control prices. Mr. Ranier said he did not feel it would be legal.

Mr. Goodman said he was interested in the protection of the consumer and also in providing for the market to be opened up. Ms. Suskin supported Mr. Goodman and said there should be a mechanism so an operator could not lose a license in one place and go to another area and open up another funeral home. Ms. Bowman said that protection was already there. Mr. Ranier wanted members to consider the people who hold the licenses now. A corporate license is now worth around \$150,000, but if Maryland law allows more corporations to be formed, an existing license would not be worth only about \$45. Mr. Ranier said that you have to consider the independent and the consumer. Delegate Morhaim would like to ask for a motion and then vote up or down. Mr. Markowski said that the Task Force was charged to look at the interests of the consumer. He believes in the free market. In his opinion, there are no non-profit funeral directors because they can't afford it. If the Task Force votes down the corporate issue, Mr. Markowski would like to see something happen that could allow a nonprofit funeral home. He has heard funeral directors talk about wanting a level playing field in the industry. At the present time, a cemetery director cannot operate a funeral home, but a funeral director can buy a cemetery.

Ms. Bowman had talked to the Antitrust Division of the Office of the Attorney General. In their opinion, there is really no reason to maintain the present restriction on the corporate licenses. If the law is changed, they see large corporations coming in, but also small owners opening homes, co-ops, etc. There used to be a similar restriction on dentists and that has been changed with apparently good results.

The motion to recommend changing Maryland law to allow more corporations to be formed was put to a vote. The motion passed by 10 to 4 with 6 abstentions. Voting yes were Ms. Bowman, Ms. Suskin, Ms. Maddux, Mr. Porter, Mr. Goodman, Delegate Morhaim, Mr. Markowski, Ms. Stewart-Duncan, Mr. Brown and Ms. Rex. Voting no were Ms. Donaldson, Mr. Ranier, Mr. Canapp, and Dr. Smialek. Abstaining were Mr. Lachance, Ms. Gilson, Ms. Elson, Senator Hafer, Mr. Murphy and Mr. Jenkins. Mr. Ranier said that he felt the Task Force made a terrible mistake.

Before leaving the meeting, Delegate Morhaim thanked members and Legislative Reference staff for their work on the Task Force. He commended members for working well together on some really tough issues. He will submit some of this as legislation. Delegate Morhaim also thanked everyone who came to the meetings and those who testified before the Task Force.

There were no significant changes made on pages 11, 12, and 13.

Out of the discussions that followed, several changes were made in the Final Report to reflect motions made by the members in the meeting, and to accurately reflect the wording of previous motions that had been made.

On page 15, members agreed to limit lifting the restriction for Maryland families only. Dr. Smialek stated that the issue of requiring families to pay for transporting bodies from autopsies is already in a review process.

Task Force members agreed to include the statement that Maryland law is silent on the issue of allowing or prohibiting the charging of interest on a preneed sale by a funeral home.

Mr. Goodman moved that the Director of Cemetery Oversight, with the Advisory Council, Catonsville Community College, and cemetery industry representatives, create a one-year certificate program and Center for Cemetery Studies at the Catonsville Community College. Mr. Brown said this could lead to a hardship on a small cemetery. Mr. Goodman's motion passed.

After a discussion of whether the Board of Morticians would have adequate authority to regulate a nonlicensee operating a funeral home, Ms. Bowman moved that the Board of Morticians, if they do not currently have the authority, be given the authority to pursue violations by unlicensed entities operating funeral homes. The motion passed unanimously.

The Task Force reviewed the List of Recommendations and made some clarifications to some to accurately reflect motions made at the meeting.

The Task Force reviewed the draft legislation.

Ms. Mitchell said the Report would be corrected, printed and distributed to Task Force members. Ms. Bowman asked to have a list of recipients of the report. Mr. Ranier said minority reports could be made to the Governor and Legislature.

The meeting was adjourned at 9:45 p.m.

TASK FORCE TO EXAMINE THE STATE'S CEMETERY AND FUNERAL INDUSTRY

Motions

December 16, 1996

1. A motion was made to make the preservation of old cemeteries an issue that would be added to the list of issues for the Office of Cemetery Oversight to handle. The motion passed.
2. A motion was made to end the illegal practice of recycling of grave sites. The motion passed.
3. A motion was made directing the Director of Cemetery Oversight to study the illegal burial of unrelated people in the same grave and have the results of the study available within one year. The motion passed.
4. A motion was made to include, in the Final Report, the statement made at the first meeting by Mr. Frank Haswell (then a Task Force member) requesting that a parallel agenda to study the funeral industry be undertaken by the Task Force. The motion failed.
5. A motion was made to change the wording of the first paragraph on the second page of the draft final report to say "among the death-care industries in the state, the funeral industries, cemetery industries, monument industry, and other death-care providers, it is the cemetery industry that is most in need of regulation". The motion passed.
6. A motion was made to add "the Secretary of State's Office provides limited regulatory authority over cemeteries on these issues" on page 3 of the draft final report under Regulation of the Cemetery Industry. The motion passed.
7. A motion was made to add "conspicuously disclose the rights of cancellation and refund" in a preneed contract to the price list disclosure recommendations. The motion passed.
8. A motion was made to reopen the discussion of changing Maryland law to allow more incorporations for the funeral industry. The motion passed.
9. A motion was made to change Maryland law to allow corporations to be formed to own funeral homes. The motion passed by a vote of 10 to 4 with 6 abstentions. Voting for were Ms. Bowman, Ms. Suskin, Ms. Maddux, Mr. Porter, Mr. Goodman, Delegate Morhaim, Mr. Markowski, Ms. Stewart-Duncan, Mr. Brown and Ms. Rex. Voting against were Ms. Donaldson, Mr. Ranier, Mr. Canapp, and Dr. Smialek. Abstaining were Mr. Lachance, Ms. Gilison, Ms. Elson, Senator Hafer, Mr. Murphy and Mr. Jenkins
10. A motion was made to recommend that the Director of the Office of Cemetery Oversight conduct a study of the feasibility of creating a one-year certificate of cemetery management and a program of cemetery management studies at Catonsville Community College. The motion passed

11. A motion was made to give the Board of Morticians the authority, if they do not already have it, to pursue violations by unlicensed entities owning funeral homes. The motion passed unanimously.

HOUSE BILL 304

HOUSE BILL 304

C2

(6lr1808)

ENROLLED BILL

— Economic Matters/Finance —

Introduced by Delegates Morhaim, Finifter, Bobo, Kittleman, Holt, Frank, and ~~M. Burns~~
M. Burns, and Pitkin

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 Task Force to Examine the State's Cemetery and Funeral Industry

3 FOR the purpose of establishing a Task Force to Examine the State's Cemetery and
4 Funeral Industry; specifying the purposes and responsibilities of the Task Force;
5 requiring the Task Force to report to certain persons by a certain dates ~~date~~;
6 providing for the composition of the Task Force; providing for the termination of the
7 Task Force; providing for the effective date of this Act; and generally relating to the
8 Task Force to Examine the State's Cemetery and Funeral Industry.

9 Preamble

10 WHEREAS, The estimated average funeral cost is \$4,470, an amount which is often
11 a burden for many families in the State; and

12 WHEREAS, It is essential that consumers in this State be afforded certain
13 protections and guaranteed certain rights; now, therefore,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That:

3 (a) There is a Task Force to Examine the State's Cemetery and Funeral Industry.

4 (b) The Task Force consists of the following ~~17~~ 25 members:

5 (1) ~~3~~ 3 Delegates appointed by the Speaker of the House of Delegates;

6 (2) ~~3~~ 3 Senators appointed by the President of the Senate;

7 (3) the Secretary of State or Secretary of State's designee; and

8 ~~(3)~~ 13(4) 18 members appointed by the Governor as follows:

9 (i) 1 representative of the Department of Health and Mental Hygiene;

10 (ii) 1 representative of the Department of Human Resources;

11 (iii) 1 licensed physician;

12 (iv) 1 representative of the Office on Aging;

13 (v) ~~2~~ 3 licensed morticians, one of whom shall be a small proprietor;

14 (vi) ~~1-representative~~ 3 2 representatives of the for-profit cemetery
15 industry, one of whom shall be a resident cemetery owner;

16 (vii) 1-representative 2 representatives from a nonprofit cemetery;

17 ~~(viii)~~ (viii) 1 representative of the hospice industry;

18 ~~(ix)~~ (ix) 1 representative of the Attorney General's Office; ~~and~~

19 (x) 1 representative from the Department of Labor, Licensing, and
20 Regulation; and

21 ~~(xi)~~ (xi) 4 members at large.

22 (c) The Governor shall designate the Chairperson of the Task Force.

23 (d) Staff support for the Task Force shall be provided by the Department of
24 Legislative Reference.

25 (e) The purposes and responsibilities of the Task Force are to:

26 (1) identify small businesses in the funeral and burial industries;

27 ~~(2)~~ (2) assess:

28 (i) the regulation of the funeral industry in this State and other states;

29 (ii) the costs to consumers of funeral merchandise, including caskets,
30 cremations, and burial plots; ~~and~~

31 (iii) the costs to the State and local governments for the burial of
32 indigent individuals;

- 1 (iv) interest rates and financing charges in the burial industries;
2 (v) the issues facing small businesses in the funeral and burial
3 industries;
4 (vi) the religious needs of various consumers as they relate to burial
5 practices; and
6 (vii) the reinterment of remains that are discovered in the development
7 of property;
8 (2) (3) develop recommendations for methods to:
9 (i) reduce costs to consumers of the funeral industry;
10 (ii) increase consumer involvement and awareness with the funeral
11 industry;
12 (iii) encourage consumers to make decisions concerning burial before
13 the need arises; and
14 (iv) disseminate information to consumers about the available goods,
15 services, and prices; and
16 (v) educate the funeral and burial industries about the religious needs
17 of consumers as they relate to burial practices; and
18 (vi) properly reinter the remains of individuals discovered in the
19 development of property; and
20 (3) (4) propose legislative, regulatory, and other changes required to
21 implement the recommendations.
22 (f) (1) ~~On or before January 1, 1997, the Task Force shall submit an interim~~
23 ~~report to the Governor and the General Assembly.~~
24 (2) ~~On or before January 1, 1998, the Task Force shall submit its final a~~
25 ~~report to the Governor and the General Assembly.~~
26 (g) The Task Force shall terminate on January 1, ~~1998~~ 1997.
27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 ~~October~~ June 1, 1996.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.

MINORITY REPORT TO THE RECOMMENDATIONS
OF THE TASK FORCE TO EXAMINE THE
STATE'S CEMETERY AND FUNERAL INDUSTRY

I dissent from one recommendation of the Task Force: that current Maryland law be changed to allow for more corporate licenses to be issued for the operation of funeral homes. This recommendation, if implemented, will surely harm the consumers in this state, increase the costs of funeral goods and services, and reduce competition in the funeral industry.

A less-than-resounding number of the members of the Task Force voted in favor of this recommendation, with ten members voting in favor, four against, and six abstentions. This recommendation, made in the eleventh hour of the Task Force's existence, reversed a prior vote that the matter needed additional study before it would be wise to make any recommendation.

Under current law, any person may become a licensed mortician and operate a funeral home in the State of Maryland. That person may elect to operate as a sole proprietorship, a partnership, or as a professional association. There are no restrictions on the number of funeral homes that may be opened and operated in any of those forms.

Since 1945, however, there have been restrictions on the number of corporate "INC" licenses that can be issued in Maryland. INC licenses in effect permit unlicensed individuals to own and operate a funeral home, with funeral direction and embalming done

by a licensed mortician. The prohibition on corporate licenses was enacted long ago by the Legislature because of abuses that were occurring at that time caused by ownership by unlicensed persons. The 59 corporate licenses in existence at that time were grandfathered in by this prior legislation and continue to this day.

The primary beneficiaries of any change in the corporate license law to allow the issuance of additional corporate licenses would be the large, out-of-state conglomerates. These large, publicly traded corporations, headquartered outside of Maryland would, under the Task Force recommendation, be allowed to come into this state and open funeral homes with new INC licenses. Rather than competing for and buying the 59 existing corporate licenses, the conglomerates would in effect be given carte blanche entry into Maryland, and would be able to open up funeral homes at will. There would be no limit on the number of funeral homes that a conglomerate could own and operate.

The influx of conglomerates has not been good for consumers in other areas, and will not be good for consumers in Maryland. Wherever conglomerates operate, the clear evidence is that the price of funeral goods and services rises substantially, with consumers paying the way for the ever increasing profits required by Wall Street of publicly traded corporations. Moreover,

numerous states are conducting anti-trust investigations into the actions of at least one conglomerate and possible attempts to monopolize the market at the expense of independent funeral directors and consumers.

This Task Force was required to assess the cost to consumers of funeral merchandise, the issues facing small businesses in the industry, and to develop recommendations to reduce costs to consumers. The recommendation of the Task Force to open up corporate licenses is counter-productive to those goals, will drive up prices, lessen competition, and ultimately harm the Maryland consumer.

Earl L. Canapp, Jr.